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EED AND  
STOM IN JUDAISM  
J.S. RAISIN

William R. Munn





SECT,  
CREED AND CUSTOM  
IN JUDAISM

A STUDY IN JEWISH NOMOLOGY

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J. S. RAISIN



SECT,  
*William Romaine,*  
CREED AND CUSTOM  
IN JUDAISM

A STUDY IN JEWISH NOMOLOGY

*Il n'est pas excellent parce qu'il vient de Dieu ; mais qu'il  
vient de Dieu, parce qu'il est excellent.*—CHATEAUBRIAND

*Nichts wahr sein kann, was nicht auch gut ist zu glauben ;  
am wahrsten aber des, was am besten.* —FECHNER

BY

JACOB S. RAISIN

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1907



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TO MY BROTHER  
IN FLESH AND IN SPIRIT  
RABBI MAX RAISIN  
THIS ATTEMPT IS  
LOVINGLY DEDICATED BY THE AUTHOR



It is with truth as it is with trees. The part that stands in the ground is a solid unit—the truth; but the part which deals with the sun, and therefore has in it the principle of life, is forever branching and branching. . . . But does it injure the tree? Does the fruit grow on the twigs, or on the solid part? You know that it is found not on the unit, but on the diverging twigs. The power of the fruit lies in diversity and not in unity. In great basilar developments unity, in higher elements, ramification.—BEECHER.

Their organic law containing elements of their polity, though given by God Himself, was yet required to be solemnly ratified by the whole people. This was done on Ebal and Gerizim and is perhaps the first, as it is certainly the grandest constitutional convention ever held among men. . . . Of all the principles established for the happiness and good government of our race, though hallowed by the blood of the bravest and the best, and approved by centuries of trial, no one had a greater origin or more glorious exemplification than this one, that all governments derived their

power from the consent of the governed.—Z. B. VANCE.

כל דבר ודבר שהיה הקב"ה אומר למשה היה אומר מ"ט פנים טהור ומ"ט פנים טמא אמר לפניו רבש"ע! עד מתי נעמוד על בירורה של הלכה? א"ל,, אחרי רבים להטות": רבו המטמאים טמא רבו המטהרים טהר.—מדרש תהלים.

לפי שבעולם הזה בזמן שרוח דרומית מנשבת אין רוח צפונית מנשבת, ובזמן שרוח צפונית מנשבת אין רוח דרומית מנשבת, אבל לע"ל אמר הקב"ה אני מביא ארגסס בעולם שמשמשות בו שתי רוחות.—ויק"ר פ"ט.

## PREFACE

All history is explained by law, law by custom. This maxim which underlies the monumental work of Montesquieu no historian as yet ventured to refute. Nothing is more indispensable for a thorough understanding of the genius of a people than the knowledge of that spontaneous expression of its nature, known as custom. "Qu'est ce que la nature?" asks Pascal, and answers "peut-etre un premier coûtume, comme la coûtume est une seconde nature" (*Pensées*, iv. 10).

But as human nature, the "premiere coûtume" is greatly modified by time and circumstances, custom, or the "seconde nature," must needs be subject to the same rule, and the greater the changes and vicissitudes of the former, the more diverse and varied will be the latter. If this be so, then Judaism, owing to the long duration of its history and the numerous places in which it has found a more or less temporary home, ought to be the most heterogeneous of religions. The question, therefore, naturally arises, What is it then that amidst the mass of frequently conflicting customs pro-

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duced by the exigencies of various times and places, made for unity? What was it that despite recurrent outbursts of cavil and quarrel, preserved the peace, integrity and solidarity of Israel?

The study of Minhagim, or Jewish Nomology, offers a quite satisfactory solution. It shows that the teachers of Judaism have never sacrificed *unity* for the sake of *uniformity*; that to maintain the whole firm and unshaken, the people were allowed to have their usages and customs "altered, abridged, enlarged, amended or otherwise disposed of," to suit their condition or convenience. Like the ancient god to those who came to his tripod, Judaism taught that every one should comply with the practices in use in the place he chanced to be. This found expression and was translated into a general tolerance which resulted in unity.

And the proverbial stubbornness of the Jews, their persistent refusal to yield implicit obedience to any one, their determination to decide for themselves what to select and what to reject, also acted as a check upon the presumption of those who, by reason of their power or position, would impose upon their people usages prompted by their piety or invented for their interest.

To put these well known truths on a firmer

## PREFACE

basis, and to verify them from some of the best and most authentic sources, ancient and modern; to point out, above all, the steadily modifying exterior above the invariable kernel of Judaism, was the main aim of the writer in the following chapters. How far he has succeeded the reader must judge for himself.

However, besides his academic interest in the subject, the author believes it also to be of considerable importance because of its practical bearing on Judaism of today, and of our land. An old discussion has lately been resumed in this country. The two "wings" of Judaism are pitted against each other, respectively claiming and vying for the palm of "historical" Judaism. As this is to be decided less by dogma (if there be any), or doctrine (in which all Jews agree), than by the disciplinary virtue of certain customs (the real cause of dissention between Judaism old and new), a knowledge of the genesis, growth and decay of Minhagim may make us clear as to which class or tendency is the most entitled to the coveted honor; which is the true scion, or can lay claim to be the first-born, of the old faith.

The author nevertheless disclaims any intention, not to say ability, to act as umpire between the

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disputing doctors. He would not—to speak Talmudically—put his head between “contending mountains.” Orthodoxy having been the mainstay of his youth, reform the goal and ambition of his maturer years, he loves and admires much in both. It was, indeed, this reverence for both the houses of Israel that emboldened him to try his hand in irenic theology, of which there is such a lack in Jewish literature, and endeavor to show that as Judaism in the past was saved from dissolution and disruption by tolerating all shades of doctrines and especially Minhagim, so can it still be in the present and must so be in the future. We must still agree, as it were, to disagree; and a common ideal can still unite us even though creeds and customs may separate us.

*In necessariis unitas, in non necessariis liberitas, in utrisque caritas.*

JACOB S. RAISIN.

BUTTE, MONTANA,

April 15, 1906.



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## PART ONE

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### GENERAL ASPECT

Creeds are the grammar of religion, they are to religion what grammar is to speech. Speech never proceeds from grammar, but the reverse. As speech progresses and changes from unknown causes, grammar must follow.

—H. FIELDING.

#### I.

Not long ago, a writer in one of the leading English undenominational journals made the point that every religion is in fact composed of two religions, and that the distinction between them is fundamental and universal. "We find it," says he, "in church and dissent, in orthodoxy and heterodoxy, in Christianity and the faiths outside. Wherever a man lives and worships he is under the influence of two separate yet coöperating powers—the religion that is *fixed*, and the religion that is *free*. As a matter of fact, no church can prosper, can combine within itself the elements of stability and progress, which fails correctly to understand the proportionate place to be accorded in it to these two religions."<sup>1</sup>

<sup>1</sup> *Christian World*, Oct. 10, 1901.

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That Judaism forms no exception to this rule every unbiased student will readily admit. The most cursory view of its history will show us that not only were epochs of concentration always followed by epochs of expansion, and *vice versa*, but that there hardly ever was an absolute cessation of hostilities between conflicting opinions even during one and the same epoch. "Struggle groups" never ceased in Israel. There were always those who upheld the "fixed"; who were in constant dread of the limitations of their contemporaries, and still more of the incapacity of their successors; whose reverence for the past was only surpassed by their distrust in and disregard for the present and the future. Whether they regarded their opponents as "dangerous persons," as *posh'ei Israel*, or merely as "honest but mistaken" who know not what they do, their motto was "Bind the Testimony, seal the Law." And hence, contrary to the widely accepted doctrine that tradition was never to be committed to writing, they, in their zeal and anxiety, usually with the best of intentions and not infrequently with liberal ideas, contributed to the ossification of Judaism by stereotyping its creeds and customs in a code of laws, and burying it under a heap of ceremonies and observ-

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ances which grew by accretion to the present day. To impress the populace with their importance, or because of their inability to discern the ground and expediency of many an antiquated Minhag, spurious or superstitious reasons were invented, pious frauds were practised, and all the dangers, pointed out by Sir Henry Maine,<sup>2</sup> following in the wake of an unhealthy development of unwritten-written usage, threatened the religion of Israel more than once. "Usage which was reasonable generated usage which was unreasonable." Analogy, too, played an important part in the process of fixation. A custom on one occasion came subsequently to be imitated on any similar occasion, and a provision which was adequate and commendable in one instance was regarded equally adequate in all instances, no matter how remote the resemblance, how inane or even insane the performance.

But this very struggle against innovation, "innovated" many into independence. Side by side, sometimes irrefragably connected with or even directly resulting from the former, there was a group whose strenuous efforts in behalf of the

<sup>2</sup> *Ancient Law*, New York, 1875, pp. 17-19. Cf. Tos. *Qidush.*, 20b, and R. Bzalel, *Responsa*, No. 19: הג'ש היא הדרשה היותר גרועה משאר דרשות



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“free” religion in Judaism acted as a deterrent, if not a preventive, to its fixity and fossilization. These emphasized the living forces of the present even at the expense of the hitherto alive but now dead forces of the past. Conduct, not creed or custom, the spiritual rather than the practical and the creative rather than the created elements appealed to them the most, and these they sought to promulgate among their coreligionists. The law to them was never “sealed,” the mere accepted precept of men, contained in books written by the “lying pens of scribes.” It was never to lose its elasticity, or to cease expanding with the passing years. Its currents, on the contrary, were constantly to deepen and enlarge; for God intended to magnify and glorify it for His righteousness’ sake.<sup>3</sup>

Yet the conflict of opinions and tendencies, the clash inevitably resulting from the steady, irresistible course of events coming in contact with the stable and inevitable force of custom always slackened, and the two “struggle groups” even made common cause whenever the welfare of Judaism was in jeopardy. Danger was the signal for readjustment, and with a platform broad enough to

<sup>3</sup> See *Makkoth*, 23b.



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include all shades of opinion, each sect which hitherto endeavored only to condemn and convict its rival, now found much to commend and exalt. The "fixed" and the "free" religions in Judaism thus brought together acted as a check upon each other whenever either began to run riot and indulge in extremes. *Ceci tuera cela.* The house of Israel, split in the piping times of peace, must never be divided against itself when attacked by a common foe. Hence the riddle of a people torn by sectarianism yet never (excepting the Karaites) suffering from sects; a stranger both to unity and harmony as well as to denominational discord and religious schism. As Professor Tiele says, "the ancient faith only bowed before the storm; but as soon as calm is restored it raises its head again, either unchanged in the old form, or in modified shape, and under new names, while preserving its former substance."

The solution of this remarkable phenomenon, of

"The variance now, the eventual unity  
Which make the miracle,"

can be found only in the spirit of democracy which pervaded Judaism from its very beginning, and which found expression in the diverse Minhagim,

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or customs which obtained among the people. Nowhere has the famous though not uncontroverted principle of Buckle, that the origin of all movements is to be sought in the people, been so verified as in the history of Judaism. It would be too late in the day to undertake an elucidation of what is now almost axiomatically certain that the Jewish people produced their religion, and not *vice versa*. But it may be affirmed with no less certainty, that this religion, Judaism, was not manufactured by the chosen few, but by the entire congregation of Israel. "The seed of Abraham were never in bondage to any man."<sup>4</sup> The authority of prophet, priest or rabbi, never overawed them. Nothing but what emanated from the people could be legally binding upon the people. In their darkest periods the Jews never surrendered their right of the *liberum veto*, not even of the initiative, and while they readily conceded to their leaders "the primacy of honor" they ever retained the "supremacy of jurisdiction." For, as Professor Smith says,<sup>5</sup> "the Semitic nation is impatient of control, and has no desire to be strictly governed either by human or divine

<sup>4</sup> *John*, viii. 33.

<sup>5</sup> *The Religion of the Semites*, London, 1901, pp. 60, 64.

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authority," yielding only to the force and pressure of public opinion. The naïve statement of the rabbis that "even the early Patriarchs already had a forecast of (and practised what) would be introduced by the latest disciples,"<sup>6</sup> is, therefore, as profound as it is paradoxical. It was precedent rather than precept that became law in Judaism. It was as St. Basil said, "under the form of history that the law was laid for what is to follow."<sup>7</sup> For Judaism, practical Judaism, is nothing more than a bundle of customs.

Hence to fully appreciate and comprehend the essence of Judaism we needs must devote ourselves to the study of Jewish Nomology, of those customs and usages which though having no distinct basis in the Torah or Talmud or post-Talmudic works, have, nevertheless, made their way to every Jewish home and are observed by various Jewish congregations. Unfortunately, of all branches of Jewish science few have until now been less cultivated than the history and philosophy of Jewish ritual customary law, or Minhagim. Here and there we find indeed an allusion to it in a *Responsum* of

<sup>6</sup> *Yomah*, 28b; *Psahim*, 117a; *Elijah Rabbah*,

ישראל קדמו לאורייתא

*Shmoth Rabba*, viii.; *Midrash Thilim*, cxix., s. v. מה.

<sup>7</sup> Cf. מעשה אבות סמן לבנים

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some ancient Rabbi,<sup>8</sup> or a recognition of its importance by some modern scholar.<sup>9</sup> But full justice has never yet been done to this most important subject, though not until we are familiar with the customs and usages of each place and period, and the ideals embodied in them, will we have a clear conception of what the genius of Judaism really is.

What then is a custom? According to English jurisprudence it is "an unwritten law, established by common consent and uniform practise from time immemorial; and it is local, having respect to the inhabitants of a particular place or district."<sup>10</sup> This definition holds good also as regards a Minhag, with one exception. A Jewish ritual custom does not necessarily have to be practised from time immemorial, or, as Blackstone puts it, "so long as the memory of man runneth not to the contrary."<sup>11</sup> Its legality depends less on its antiquity than on its ubiquity; less on the number, or numberless, generations that have conformed to it than on the number of individuals

<sup>8</sup> Ribash, No. 44; Joseph b. Ezra, *Massa Melekh*, last chapter.

<sup>9</sup> Krochmal, *More Nbukhe Hazzman*, Warsaw, 1894, p. 201; Weiss, *Dor Dor Vdorshav*, Vienna, 1871, II. 68-71; *Jewish Encyc.* (J. H. G.), s. v. "Custom."

<sup>10</sup> Greenleaf on *Evidence* (15th ed.), § 248.

<sup>11</sup> *Commentaries*, I. § 76.

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who still conform to it.<sup>12</sup> To be vested with all the dignity conferred on English common law it need not necessarily be a "law by Moses on Mt. Sinai." It is true that the eminent Elijah Gaon of Vilna is said to have established the importance of Minhagim according to their antiquity, regarding those which originated since the codification of the "Shulhan Arukh" as not binding at all; those which were adopted since the Talmudic period to be subject to change by common consent; while those of the Bible and the Talmud were to him fundamental and unalterable.<sup>13</sup> But, if time were the only criterion, it would not be difficult to prove that many Minhagim reputed to have been in vogue from time immemorial or since the "presentation of the law" to Moses, were in reality of recent date, and only after their birth or the exigency which brought them into being was forgotten, were they crowned with the halo of sanctity. The value of a Minhag cannot, therefore, be measured by its time-honored observance, but by the uninterrupted and widespread hold which it obtained among the people of a certain place or district.

<sup>12</sup> Ribash, *Responsa*, No. 475: ואינו קרוי מנהג אלא דבר השכיח

<sup>13</sup> See Shapiro in *Hammeliz*, X. 186, 192-4.

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All antique religions were more or less the outcome of social usage and customary rites. "In more primitive forms of ancient life," says Professor Smith,<sup>14</sup> "the force of custom is so strong that there is hardly any middle course between living well up to the standard of social duty which it proscribes, and falling altogether outside the pale of the civil and religious community." He also tells us that "no positive religion (*i. e.*, one that traces its origin to the teaching of great religious innovators who deliberately depart from the accepted precepts of the past) that has ever moved men has been able to start with a *tabula rasa* and express itself as if religion was beginning from the first time; in form, if not in substance, the new system must be in contact all along the line with the old ideas and practices which it finds in possession." Pindar and Herodotus unite in calling custom the queen of the earth; and Hommel tells us that an ounce thereof outweighs a ton of reason. To the ancients, customs constituted the soul and essence of religion:

"In them did they live  
And by them did they live; they were their life."

Like the laws of the Medes and Persians none ever

<sup>14</sup> *Op. cit.*, pp. 1-2, 256.



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transgressed them with impunity. Their religion consisted mainly or only of one element—the “fixed”; their observances were exclusively of what they regarded *quod semper, quod ubique, quod ab omnibus*. They lacked the power of “perpetual readjustment to circumstances perpetually changing.” Hence Apollo fell with Delphi, Baal with Babylon, Serapis with Thebes and Jupiter with the Capitol. Not so Judaism. Kingdoms fell and civilizations changed, doctrines disappeared and Minhagim were modified, but the spirit of the “free” religion which was never wanting carried it along the stream of years, like

“A sacred ark, which from the deeps  
    Garners the life for worlds to be,  
And with its precious burden sweeps  
    Adown dark time’s destroying sea.”

This peculiarity of Judaism has been agitating the mind of many a medieval philosopher and was the cause of not a few spirited discussions both in church and synagog. Failing to see the reason for its vitality, Christian theologians tried to find common ground between Judaism and the religions which still exist. Nork’s *Braminen und Rabbinen* is an unsuccessful attempt to draw a parallel between Judaism and Buddhism. But no more

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successful were the writers who endeavored to compare it with Protestantism or Catholicism. Attempts were made from time to time to prove the thesis that the substance of Judaism was not unlike that of Roman Catholicism. Richard Simon, the Catholic, in his translation of Modena's work on Jewish customs,<sup>15</sup> and Chemnitz, the Protestant, in his "Examen," taxed their ingenuity to prove the resemblance between them, and the common principles which underlie them both. As Judaism is based on Scripture, tradition and accepted usages, so is Catholicism; as the former is equally disposed towards Minhag Sphard, Ashknaz, Poland, etc., neither does the latter discriminate among the Gallican, Dominican, Franciscan, etc., observances. But the similarity is only on the surface; their inner kernels are entirely different. The Vatican did indeed show a greater regard for catholicity in faith than any other Christian denomination, and has proved itself more liberally inclined than most of the Protestant communions. Yet, the Catholic church has justified its claim to its name only in so far as, according to the pithy saying of the learned Aeneas Sylvius who later became Pope, "not because all men

<sup>15</sup> *Ceremonies et Coûtumes*, Paris, 1674, Int.



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have it, but because all men ought to have it." But even if the two systems be closely allied, they are diametrically opposed in their essentials. It is the *sanction* which either requires for "religionizing" the various rites that constitutes the *caput, principium et finis* wherein they disagree. The force underlying Jewish observances is nothing else than the avowed or tacit consent of the *people*, and their willingness, expressed or implied, to be bound by them; that lying beneath the practices of Catholicism is the authority of the priesthood. Clearly there can be but little in common between a religion which according to Dr. Felsenthal acknowledges no dogma save that of freedom of thought and expression, and a religion which declares that, in the words of a Jesuit professor, "the principle of liberty of conscience is one which is not, and never has been, and never will be approved by the Church of Christ." Clearly there must be a vast difference between a religion which already thousands of years ago made God say unto Moses, "Thinkest thou I discriminate between Jew and Gentile, man or woman, man-servant and maid-servant? He who doeth what is right shall reap his reward,"<sup>16</sup> and a religion

<sup>16</sup> Yalqut *Breshith*, xiv. 76.

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which only recently and in an enlightened country like ours prompted Cardinal Gibbons to state that "the fathers of the church are unanimous in considering as outside of the Catholic communion any one who *in the least degree* deviates from even one point of the doctrine proposed by the authoritative magisterium of the Church," or, to quote a still higher authority, the encyclical of Pope Leo XIII., "It is necessary that the Church should be one in all lands and at all times . . . one in faith, one in end, one in participation of the means adapted to the attainment of the end, and one as subject to one and the same authority. . . . It is the duty of all followers of Christ not merely to accept this doctrine generally, but *to assent with their entire mind to all and every point of it.*"<sup>17</sup>

There were indeed heated controversies in the Jewish camp as to the valuation of certain creeds and customs. But these were only temporary ebullitions which soon spent themselves in their own ferment. Judaism, as a whole, remained unaffected; its essence eluded the grasp of either of the "struggle groups." Its development has been continuous; and its "nature when a germ

<sup>17</sup> See Wendte, *The True Basis of Religious Unity* (Monog.), Boston, A. U. A.

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was the same as is its nature when fully developed." The Talmudic Rabbis have already called attention to the fact that the six hundred and thirteen precepts of Moses were reduced by David to eleven (*Ps.* xv.), by Isaiah I. to six (*Isa.* xxxiii. 15), by Micah to three (*Micah* vi. 8), by Isaiah II. to two (*Isa.* lvi. 1), by Habaquq to but one (*Hab.* ii. 4).<sup>18</sup> The same took place also in Medieval and post-Talmudic Judaism. We frequently hear that Christianity started as a reform movement in the Jewish Church. But try as we may, we fail to see wherein the reformation lay. In creed, there are more passages referring to the fatherhood of God and the brotherhood of man in the Old Testament and the Talmud than in the New Testament and the writings of the early Christian fathers. The two famous passages of Jesus, "And thou shalt love the Lord, thy God, with all thy heart, all thy soul and all thy might, and thy neighbor as thy self," are quoted from the Pentateuch word for word (*Deut.* v. 6; *Levit.* xix. 18). The "golden rule" itself was enunciated by Hillel<sup>19</sup> before Christ, and must have been original with neither. As regards ritual observances we find the Tannaim more liberal than the Apostles

<sup>18</sup> Midrash, *Thilim*, xvii.

<sup>19</sup> *Shabbath*, 31a.

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and their immediate successors. For inasmuch as the latter at the Council of Jerusalem (54 C. E.) decided that the fundamental principles of Christianity consist in abstaining "from meats offered to idols (idolatry), and from blood (murder) and from fornication, and from things strangled" (*Acts* xv. 29), the Rabbis, in their enumeration of the deadly sins to the commitment of which death is preferable, make no mention of "things strangled."<sup>20</sup> And while the nineteen general councils of Catholic Christendom, from the first which declared the coequality and consubstantiality of the Son with the Father and the Holy Ghost down to the last which declared the infallibility of the Vicar of Christ, while these nineteen councils with the two hundred and fifty-seven pontiffs all claimed to be guided, as Cardinal Manning tells us, by the same spirit and, hence, "no doctrine of faith and morals from their hand and from their lips has been out of harmony with the revelation of Jesus Christ," and therefore hurled their anathemas and excommunications at those who dared differ from them in the least, the leaders in Israel, less pretentious and fully as conscientious, gave free scope to every seeker after truth. The much-maligned

<sup>20</sup> *Sanhed.*, 74a; Saádya unnecessarily adds "theft" (*Emunoth Vdéoth*, iii. 1-2).

## GENERAL ASPECT

Talmud contains statements which, were it a Catholic work written for the Holy Church, would secure it the first place on the Index, such for instance as that all that is required to be a Jew is to abjure idolatry; that a new Torah is to be given with the advent of the Messiah; that many commandments were never intended to be observed, that only they who ate of the mannah were expected to perform them; and a host of others.<sup>21</sup> Later on Maimonides attempted to introduce a creed of thirteen articles of faith, but this was curtailed by Albo to three, and abolished altogether by the latter day "Saints" (Hasidim).<sup>22</sup> Hence the difficulty to define Judaism. We can only say of it in the words of Professor James, that "it cannot stand for any single principle or essence, but is a collective name,"<sup>23</sup> or as the Rabbis have it, all it contains are "the words of the living God."

But creed is custom in a crystallized state, and hence we come again to our thesis that to understand the former we must be familiar with the evolution of the latter. In civil law, according to Hallam,<sup>24</sup> "examples beget custom, and custom

<sup>21</sup> *Niddah*, 61b; *Yalqut Isaiah*, xxvi. 2; *Sanhed.*, 21b; *Mgil.*, 13a.

<sup>22</sup> See Mendelssohn, *Jerusalem* (in *Ges. Schrift.*, vol. III.), Leipzig, 1843, pp. 322-3.

<sup>23</sup> *Varieties of Religious Experience*, London, 1903, p. 26.

<sup>24</sup> *The Middle Ages*, II. 140.

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ripens into law ”; in ecclesiastic law, custom ripens into creed. The very belief in the unity of God, the basis of the Jewish faith, “ begun as a custom centuries before it was transmitted into a law.”<sup>25</sup> A thorough knowledge, therefore, of Minhagim in their concrete forms and abstract significance, and a disinterested investigation in this as yet unexplored region, may throw light on many an ancient and modern Jewish institution, and enable us perhaps to solve some perplexing problem vexing the minds of those sincerely interested in the welfare and stability of Judaism. As we see the light of distant suns long after they have become extinguished, so will the Minhagim point out the spirit of the times and places which gave them birth. We need, however, be constantly on our guard against false valuation; we must carefully sift and scrutinize them to secure satisfactory results in the mazes of Jewish Nomology. Thus only will we be able to decide which, if any, of the religious tendencies constitutes “ per se cultus divinus aut aliqua saltem pars divini cultus,” which, if any, can lay the best claim to being the offspring of *historical* Judaism.

<sup>25</sup> See Montefiore, *Hibbert Lectures*, London, 1897, pp. 21-22; 46-7; 52; Künen, *Hib. Lect.*, p. 119.



## PART TWO

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### ORIGIN OF MINHAGIM

Laws derive their authority by possession and usance. . . . They grow great and ennoble themselves like rivers by running: but follow them upward to their source, 'tis but a little spring, scarce discernible, that swells thus, and thus fortifies itself by growing old.

—MONTAIGNE.

Tradition must precede all scripture, words serve as our warrant ere our books can be.

—BROWNING.

## II.

“ And it was customary in Israel [that] from year to year the daughters of Israel went to lament the daughter of Jephthah, the Gileadite, four days in the year ” (*Jud.* xi. 39-40). This simple statement at the conclusion of the tragic story of the Biblical Iphegenia throws not a little light on the evolution of many a custom in Judaism. Originally a mere expression of condolence on the part of a few friends, it eventually became a *hoq* (lit. an ordinance, or statute) to commemorate the anniversary of distinguished leaders (2 *Chron.* xxxv. 24-25), was gradually construed to include

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not only princes of the blood royal but any persons of prominence,<sup>1</sup> and finally culminated into the *Yahrzeit* which many of even the most lukewarm dare not discard. "The doubtful precedent of one generation becomes the fundamental maxim of another." This is true not only of the laws and usages whose origin is known but also of those which came down to us in an already more or less advanced state of development, and traces of which are to be found not only in the Talmud, the oral law *par excellence*, but also in the Bible, the written law. For there always existed some sort of tradition in Judaism. As Mr. Montefiore says, "It was but natural that, at the main sanctuaries, in both Israel and Judah, there should grow up a kind of consuetudinary law in matters which were of continual recurrence. The priests who regarded themselves as successors of Moses attributed to him their Torah as founder."<sup>2</sup> The Bible, therefore, as we have it, is rather a compilation of customs than a creation of one or more law-makers. Deuteronomy itself, perhaps the first formulated code is, according to most reliable authorities, "anything but an original law book,"<sup>3</sup>

<sup>1</sup> See *Ybamoth*, 122a (Rashi).

<sup>2</sup> *Op. cit.*, pp. 69, 234.

<sup>3</sup> Dillman, *Ex.-Lev.*, Pref., p. viii.



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but contains "the accepted applications of long established principles or formulations of ancient customs."<sup>4</sup> And the implication is equally true of the other books constituting the sacred Scriptures.

There is, however, a radical difference between a Biblical *hoq* and a Talmudic and post-Talmudic *Minhag*. The former was the product primarily of changing times, the latter was the result mainly of diversity of places. During the Biblical period Jews led too uneventful a life, were too much predominated by a particular body of priests or prophets, and inhabited too narrow a strip of land—conditions not quite favorable to engender or encourage multiplicity of usages or beliefs. Time alone could disintegrate old customs and introduce new ones, and observances could change only or mostly with the succeeding generations. We know little or nothing of the "commandments, statutes and laws" ascribed by tradition to Abraham (*Gen.* xxvi. 5; cf. *Id.* xviii. 19), we cannot, therefore, tell how they withstood the hand of time. But we do know many others, and these are usually stamped with the hall-mark of their environment, and bear the impress of the several stages of civilization through which they have passed. There

<sup>4</sup> Driver, *Deut.* (N. Y., 1895), Pref., pp. lvi, lxiv.

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are, for instance, three distinct regulations anent the "Sabbatical year," by which we may determine the *cultur-Geschichte* of the epochs which gave them birth. In its earliest period, when it was still a child without a name, it was simply a year when the land "did rest and lie still" (*Ex.* xxiii. 10-11). The soil having been yet the collective property of each tribe or township, to it every individual rendered an account when he abused the privilege granted him. But with advancing civilization property gradually became the monopoly of a few who began to encroach upon the rights of the town or tribe (*cf. Lev.* xxv. 34). To guard against such undesirable consequences, the year on which from time immemorial the land *did* "rest" and lie fallow was instituted into a "Sabbatical" year (*Id.* xxv. 2-8, xxvi. 34-43), when the landlord was compelled to relinquish all claim to his possession by being prohibited to cultivate it, thus reminding him, as it were, that he was nothing but a holder or tenant.<sup>5</sup> The law, however, was not to remain stationary. When, later on, barter and trade had brought with them the necessity or expediency of borrowing, with its

<sup>5</sup> See Maine, *Village Communities in the East and West*, pp. 77-99; 107-113.

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sometimes inevitable evil—repudiation, the same custom was turned to the advantage of the dilatory debtor, and thus the “Sabbatical” year of Leviticus and Deuteronomy assumed the appellation of a “Year of Release,” and became a season for the perpetual or temporal remission of *debts*.<sup>6</sup>

Nor did it stop even here. As barter developed into a complex system of commerce, the *Shmitah* too had to be accommodated to circumstances. Remission, or even suspension of debts were no longer practicable. Yet openly to abrogate an ancient custom would not be advisable. A legal fiction was, therefore, resorted to, and a readjustment or compromise effected. The *Prosbul*, or formal document, introduced by Hillel (based perhaps on a precedent in *Jer.* xxxiv. 8–11), made it appear as if the creditor relegated his right to the court, and the peace of his conscience was disturbed no more.<sup>7</sup>

Another example of the development of a custom *pari-passu* with the civilization of the time is found in the mode of “mancipation,” the transfer of property or inheritance. That the custom to

<sup>6</sup> See Driver, *Deut.*, pp. 176–180.

<sup>7</sup> See *Shbiith*, x. 1, 3, 8, and Talmudic dictionaries, s. v.

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pull off a shoe during the transaction was regarded as very antiquated even by the writer of the Book of Ruth is evident from the statement: "Now this was the manner 'in former times' (*lfanim*) in Israel."<sup>8</sup> But though shoe-pulling became superseded by hand-shaking, and this in turn by document-writing (*Prov.* vi. 1; *Jer.* xxxii. 6-12),<sup>9</sup> the old custom was still retained only that, according to Targum Jonathan, it was a glove and not a shoe that was removed. And when, under Roman rule, the law regarding *res mancipii* took root in Israel, no purchase was legally confirmed unless the written agreement was supplemented with drawing a veil or kerchief.<sup>10</sup>

Not all customs, however, were so malleable as to be affected by molding circumstances. Some were, so to speak, as hard as adamant, forming foundations for new laws and displacing the old ones with which they conflicted. Who knows how many laws were eliminated from the Bible because of the contrary prevailing usages, or how many

<sup>8</sup> See Ibn Ezra *ad loc.*

<sup>9</sup> Cf. Maine, *Ancient Law*, pp. 198-9 (Testament per aes et libram).

<sup>10</sup> See *Biur* to Ruth, iv. 7-8; *Jer. Qidushin*, i. 5; *Bab. B. Mzia*, 47a, and *Mid. Ruth ad loc.*

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were brought into being by the sheer force of pre-existing practices!<sup>11</sup>

Take, for instance, the once popular custom of rendering sacred tithes to God or the priests.<sup>12</sup> It dated so far back that it was believed to have been practised already by Jacob (*Gen.* xxviii. 22), and from time immemorial it was more or less punctually observed by the proceeds being probably expended for holy and festal purposes. The priests, however, seem to have endeavored at a later period to turn this tide of revenue to their own advantage, for we see the priestly legislator (or legislators) trying to exclude the laity from wholly or even partly enjoying their gifts: "And ye shall have no sin by reason of it, when ye heaved from it the best of it; neither shall ye pollute the holy things of the children of Israel, lest ye die" (see *Lev.* xxvii. 30-32; *Num.* xviii. 26-32). But the masses little heeded the threats or entreaties of the priesthood, and the Deuteronomic writer, finding it impracticable to enforce an ordinance against so firmly established an usage, contented himself, as did many before and after him, with a readjust-

<sup>11</sup> See *e. g.*, Nowak, *Lehrbuch d. Heb. Archeol.*, 1894, § 64; Driver, *op. cit.*, xlvii (note), lxi, and xiv.

<sup>12</sup> Herman, *Gottesd. Alterth. d. Griechen*, §§ 20, 24.

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ment or compromise. The spirit and aspect of the institution were retained, but to make it also sacerdotal the tithes were to be consumed exclusively at the holy city of Jerusalem (*Deut.* xiv. 22-7).<sup>13</sup>

Again, the repeated prohibition to gash one's flesh in honor of or in sympathy with the dead seems to have proved unavailable (*Lev.* xix. 28, xxi. 5; *Deut.* xiv. 1). Jeremiah probably never heard of it, for he regards it a calamity that "neither shall men lament for them, nor cut themselves, nor make themselves bald for them" (*Jer.* xvi. 6, xli. 5). Instead, novel customs concerning the dead appear to have come in vogue, customs which if they ever obtained among the Israelites as they did everywhere else<sup>14</sup> were yet never mentioned before, *viz.*, "tearing (not as A. V. "themselves," but) their garments for them in mourning, to comfort them for the dead," and to offer a "cup of consolation to drink for their father and mother" (*Jer.* 7; cf. *Hosea* ix. 4), and these, with some slight modifications, have been retained to the present day. So also despite the exhortation to

<sup>13</sup> See Reihm, *Handwörterb. d. Bibl. Alterth.*, § 1793; Driver, *op. cit.*, pp. 168-173.

<sup>14</sup> Cf. Tylor, *Primitive Culture*, II. 26; Smith, *Rel. Sem.*, p. 322 (notes 2, 3); Weiss, *op. cit.*, I. 40 (note).



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cut down the idolatrous groves (*Asheroth*, *Ex.* xxxiv. 13), insisted upon also in Deuteronomy (xvi. 2: "Thou shalt not plant thee a grove of any trees near unto the altar of the Lord thy God"), we are nevertheless told that Joshua, who, like his master, was known as the "Servant of the Lord" (*Josh.* xxiv. 29; *Jud.* ii. 8), "took a great stone and set it up there, under the oak that was by the sanctuary of the Lord" (*Josh.* xxiv. 26).

The dietary customs furnish another analogon. All Israel, even that anomalous being—the "stranger," are evidently included in the injunction not to eat any meat "torn of the beast of the field" (*Trepah*, *Ex.* xii. 1), or of that "which died of itself" (*Nbelah*, *Lev.* xvii. 15). Yet for a long time this law was honored in the breach. People continued in indulging in the forbidden flesh-pots. And so here again we find the Deuteronomist, ever bent on reconciling the "ought" with the "is," try his hand at a compromise. A "Nbelah" or "Trepah" was indeed an abomination, but it might be disposed of by giving it to the *stranger* or alien (xiv. 21). It seems, however, that even this concession was ineffectual. For in Ezekiel the restriction, made there to in-

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clude fowls also, apparently refers to the priesthood alone (xliv. 31), and even with them it was only optional, and observed by the over-zealous and too-scrupulous few (*Id.* iv. 14). In this unsettled state the dietary laws continued as late as the Tannaic period, if not later. The first Mishnah in *Hulin* states that *all* may perform the rite of slaughtering animals, save those whom civil law regards as non-responsible beings. But as Minhagim multiplied the butcher was required to possess a thorough knowledge of the customs pertaining to his trade. Still later every killing had to be witnessed by an expert, from "beginning to end,"<sup>15</sup> while during the Middle Ages the simple statement, "If the lungs be found perforated the animal is 'Trepah,'" produced a literature more voluminous than both the Talmuds combined.<sup>16</sup>

Thus we see that even in Biblical times customs appeared, developed, and disappeared either entirely or, fossil-like, left behind them a slight impression of their former existence. Others, again, though emerging from their obscurity within comparatively recent date have gradually come to be an integral portion in Judaism, and time and cir-

<sup>15</sup> Cf. *Hulin*, pp. 1, 9, 12.

<sup>16</sup> See Lilienblum in *Hammeliz*, x. 290 et seq.



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cumstances only added to their prestige and sanctity. The last mentioned example of "Trepah" is one of these; for a more notable instance we need but refer to the Sabbath.

Strange as it may seem, this most rigidly preserved and zealously observed Jewish institution is almost entirely unknown in Judaism till about the middle of the ninth century B. C. In the oldest portion of the Bible it is very seldom referred to and almost always in connection with the New-Moon Day. No allusion to the sanctity of the Sabbath is to be found either in Joshua, Judges, the books of Samuel or of Kings. On the contrary, to judge from these books it would seem that the Sabbath was in no manner distinguished from any other week-day. Joshua surely must have worked on it while encompassing Jericho seven days in succession (vi. 3-4, 13-15). Nor were David and the righteous Jehoshaphat ever reprimanded by prophet or troubled in their conscience for waging not only defensive but even offensive war on what was soon to become the holiest day of rest (1 *Sam.* xxx.; 2 *Kings* iii. 9).

Perhaps the first Sabbath regulation is the one in Exodus (xxxiv. 21), the simplicity and straightforwardness of which attest its antiquity: "Six

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days shalt thou work, but on the seventh day thou shalt rest; in plowing time and harvest time thou shalt rest." It is hard to tell which was to be emphasized the most: the work during six days, the rest on the seventh day, or the rest on the seventh day during plowing and harvest time. To all appearances it must have been the latter. For it stands to reason that at that early period of the nation's existence no real laborious work was performed except during "plowing time and harvest time."<sup>17</sup>

In the course of a century or two civilization among the rude Hebrew agriculturists made rapid strides. Many strangers voluntarily came and settled in their midst, and many more were subdued into slavery by force of arms. Economically as well as religiously the seventh day of rest now grew to be indispensable to their welfare. It therefore became a fixed institution, a *Shabbath*, or Day of Rest, not only for the plowing and harvest season but for the entire year. But no fixed formula as to its observances is as yet heard of, and for many years it continues to be a day of mirth and revelry

<sup>17</sup> Floody, *Scientific Basis of Sabbath and Sunday*, Boston, 1901, pp. 60-1; Montefiore, *op. cit.*, pp. 56, 229-30, 237-39, 554; Jastrow, *Original Character of the Sabbath*, in "Amer. Journ. of Theol.", Apr., 1898; Channing, *Works*, Boston, 1901, pp. 151-53.

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to some (*Hos.* ii. 2), of solemn assembly and holy convocation to others (*Isa.* i. 13; *Amos* viii. 5), of rest and cessation from labor to all.

Yet even the Sabbath was no proof against the incursions of time. Amos tells us how impatiently many Jews looked for the Sabbath to be gone that "they may set forth wheat." Then as now some satisfactory reason was demanded why worldly interests should be sacrificed for religious observances, and the first attempt at an explanation is to be found in Deuteronomy (*cir.* 622 B. C.). This great unknown writer, to whom every custom embodied a motive of gratitude, and every commandment a means to bring man nearer to God,<sup>18</sup> saw also in the Day of Rest a sacred and edifying reminder of that most important event in Jewish history, the Exodus from Egypt (v. 14-15; cf. xv. 15, xvi. 12, xxiii. 7, xxiv. 18), and hence also a warning that "thy man-servant and maid-servant may rest as well as thou."

The exile also contributed greatly to strengthen the position of the Sabbath. Deprived of all other religious observances, most of which were national or territorial in character, the Seventh Day of Rest remained the only externally visible

<sup>18</sup> Duhm, *Theol. d. Proph.*, pp. 197 f.

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emblem of ceremonial Judaism. It could no longer be observed for the Deuteronomic reason, because of the sacred memories it awakened, for was not Israel as much in bondage then as it was centuries back in Egypt? Neither could it be retained solely as a day of rest, for no rest was granted to captives and slaves. The Sabbath therefore became the symbol of unity between God and Israel, "an everlasting sign" that the people were still sanctified even as was the day, though both were apparently neglected by Him (*Ez.* xx. 12).

Of course the reason lost its significance after the Restoration, and the Sabbath like many another fast or feast day began to fall into abeyance (*Zech.* vii. 3, 5-6; *Nehem.* x. 32, xiii. 15-22). In order to put it on a firmer basis the priestly writers (*cir.* 450 B. C.) adorned it with the current legend of creation, affirmed that God Himself rested on the Sabbath day and hallowed it, and that Jews, therefore, are in duty bound to emulate His example. Sabbath thus became a divine institution, to violate which was to "pollute" what was holy. It was given not for man's sake, to rest and enjoy himself, but for the sake of God. Since then, like all ecclesiastical institutions, it has grown

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in rigidity and solemnity. No fuel was to be gathered thereon, no light kindled, no visiting done (*Ex.* xvi. 29, xxxv. 3; *Num.* xv. 32–36), a priestly, Puritanic “Lord’s Day,” gloomy as the situation in which Israel found itself at that time. It went so far that it was necessary to prohibit mourning and recommend *’Oneg*, or enjoyment, on that former day of rejoicing, and Judith is *praised* for removing the signs of her widowhood on the Sabbath (*Judith* viii. 5–6). But the tendency towards fixity was always on the increase. In the last chapter of the Book of Jubilees (*cir.* 130 B. C.) sexual intercourse was prohibited and according to Luke (xiv. 1–8) healing too was interdicted, until in the course of time all manner of enjoyment were rigorously refrained from, even children’s play was hardly tolerated, and the wearing of jewelry was a transgression of the sanctity of the Sabbath.<sup>19</sup>

Instances of this kind might be multiplied *ad libitum*.<sup>20</sup> To mention but one more because of

<sup>19</sup> See Mahrik, *Responsa*, ix. (שבדאי לא ישמעו) ; Hilkhta Gbirta, *Shab.*, 86, and cf. *Yomah*, 85b (היא נתונה לכם ואי אתם נתונים לה) ואנשי חו"ל בזכות מה [הן חיים]? בזכות שהן, and *Breshith R.*, xi. 3, מכבדין את השבתות ויו"ט

<sup>20</sup> See e. g., Spinoza, *Tractatus Theol.-pol.* (Eng. tr. London, 1862), pp. 309–15; Rubin in *Haeshkol* (Cracow, 1898–99), I.

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its importance, circumcision which is ignored in Deuteronomy "is in the priestly code referred back to Abraham for its date of institution, and is described as an everlasting covenant. It is the passport of admission to the Passover service, which without it is forbidden to the foreigner,"<sup>21</sup> and even the most ardent reformers of the nineteenth century hesitated to abolish it. However, the examples already adduced sufficiently illustrate the point that Judaism from the very start regarded with equanimity the shifting of custom and usage, and while compliance with the traditional faith was the desideratum, free scope was given the people to decide upon the local form which Judaism was to assume. We have seen how customs observed by some or at one time were disregarded by others at other times, and *vice versa*. A casual glance would convince us that this was equally true in matters of creed and doctrine. "The historical texts," as James Darmsteter has it, "make it perfectly evident that all these heroes of prehistoric times, these patriarchs,—first sym-

and II. (שלש תכונות) ; Jastrow, *The Study of Religion*, N. Y., 1902, xiii. 3. Conspicuous among these is the feast of the New Moon.

<sup>21</sup> Montefiore, *op. cit.*, pp. 229, 337-8; cf. *John*, vii. 22: "Not because it (circumcision) is of Moses, but of the fathers."



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bol of Jewish sanctity,—Moses, the supreme legislator, the man of God; the liberating judges sent by divine pity to the rescue of a repentant people,—even David himself, the prototype of the Messiah, ignored with perfect security the majority of the principles that constitute the heart of organized Judaism.”<sup>22</sup> That such damaging evidence should be included in the Bible and that notwithstanding its discrepancies and inconsistencies it should still be regarded as a complete whole; that the exclusiveness of Ezekiel, the universalism of the Isaiahs, the skepticism of Ecclesiastes, the hopefulness of Deuteronomy, the stoicism of Job and the ardent joy of living of Canticles were all grouped together in one sacred Canon; that “Thou shalt love thy friend as thyself” should be immediately followed by “Thou shalt not wear a garment of mixed stuff of diverse sorts” (*Lev.* xix. 18–19);—shows that the two religions, the “free” and the “fixed,” existed already then in Judaism, is proof that both were vested with the sanctity of divine law. The Biblical codifiers have preserved these conflicting and frequently diametrically opposed statements<sup>23</sup> because all of

<sup>22</sup> *Selected Essays* (Ed. Jastrow), Boston and N. Y., 1898, pp. 27–9.

<sup>23</sup> See *Makkoth*, 24b.



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them were regarded as Jewish; because whether they were in accord with the teachings of priest or prophet, in consonance with the radical or conservative views of the times, based on Amos or Leviticus, the Psalms or Daniel, they were all the outcome of and therefore essential to the stability and virility of Judaism.

## PART THREE

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### RISE AND GROWTH OF MINHAGIM

Whoever considers the subject historically will easily observe, that the body of the law, the legal system as a whole, is not made. All that is done in such cases is essentially this. What is current and traditional is systematically incorporated. Occasional slight adaptations to the changing life-conditions of a people are made. We may say of the legal codes what we say of the state constitutions, which indeed are but parts of the general code of laws: *they are not made; they grow*. . . . Intellect and deliberation were always operative in the transformation, but only in the sense of seeking at all times to adapt the existing institutions to new needs and conceptions.

—PAULSEN.

### III.

The struggles between priest and prophet, or the upholders of the "fixed" and those favoring the "free" elements in Judaism, with the frequently recurring effort to conciliate both by means of compromise,—the dim and crude beginnings of which are already discernible in the Bible,—became more and more intense during the critical period of the Second Commonwealth and the one immediately following. There was, however, a shifting of the view-point. Hitherto politics was

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the handmaid of Queen Religion, henceforth religion is subsidiary to politics. The "Sons of the Prophets," the "Nazarites" and the "Rekhabites" (2 *Kings* x. 15; 1 *Chron.* ii. 55; *Jer.* xxv. 6), and later the "Samaritans" and the "Cuthites" (2 *Kings* xvii. 24-41), all seem to have had customs of their own which they changed even during Biblical times.<sup>1</sup> Yet Spinoza is right in maintaining that there were no religious *sects* among the Jews until the High Priests under the Second Commonwealth usurped the right of sovereign princes, and in deducing therefrom his "political axiom" that it is "disastrous both to religion and the commonwealth to concede the ministers of religion a right to pass decrees or administer the business of the state."<sup>2</sup> Some were of the opinion that the "nationality" of the Jews must be preserved, that their salvation lies in remaining a "peculiar people" to the end. Others, again, seeing that the temporal power of Judea was nearing its end, and convinced that the threatened evil could neither be repelled nor averted took steps to prepare the people for it. They, therefore, encouraged and, in a measure, helped to introduce the

<sup>1</sup> Montefiore, *op. cit.*, pp. 51, 80.

<sup>2</sup> *Op. cit.*, pp. 317, 321; cf. Zunz, *Ritus Syn. Poesie*, pp. 2-3.

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customs and habits of those whose fellow-citizens, if not subjects, they were inevitably to become, and were denounced by the zealous orthodox as "dealers wickedly against the Covenant" (*Dan.* viii. 23, xi. 32, xii. 10). This is best shown in their views on the translation of the Bible into Greek. While some of the early Rabbis speak most favorably of the Septuagint, others inveigh bitterly against it. The former regarded it as a favorable means of bringing about a better understanding between Jew and Gentile, and even sought and found it recommended in Holy Writ.<sup>3</sup> The latter calumniated it lest it should obliterate the line of demarkation and destroy the wall of separation which to them proved the only safeguard of their race and religion. The result of it, they claimed, was as fatal as that of the Golden Calf; the very sun became for three successive days overcast in sorrow. The treasures of Israel should never have been revealed to the profane eyes of the outside world.<sup>4</sup>

These "incensed points of mighty opposites" which formed the pivot round which revolved the

<sup>3</sup> *Mgillah*, 9; *Yalqut Breshith*, 61: מכאן לתרגום מן התורה or, יהו דברי תורה נאמרין בלשוננו של יפת וכו'.

<sup>4</sup> *Sophrim*, xvi. 8; *Tanhuma*, "Ki Tissa," 34; *Shmoth R.*, 47.

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principles of the Pharisees, Sadducees and Essenes, were brought to a focus by the great Shammai and Hillel, and their disciples after them.<sup>5</sup>

Shammai was an ardent patriot and espoused the cause of Nationalism. He would brook no intervention, not so much as a suggestion, from without. To him the safety of the race consisted in becoming impervious to foreign influences. With this end in view he endeavored to establish a National Church with a chosen few at its head, and the power to enforce obedience to its command.<sup>6</sup> Judaism was to become exclusive, converts to it being admitted only with the greatest reluctance.<sup>7</sup> And these views were adopted by some of his most eminent followers. True to the teaching of his master, R. Aqibah's exclusiveness is but too well pronounced in his contempt for the degraded *Ame Haarez* (perhaps those who sided with the Romans), while R. Tarphon declares practice to be above knowledge (of the law).<sup>8</sup> It should not be surprising if they really did interpret

<sup>5</sup> See "Talmudi" in *Hashiloah*, viii. 289-299.

<sup>6</sup> See *Aboth d'R. Nathan*, ii. (end); *Bezah*, 15b; *Sukkah*, 28a; *Jer. Shabbath*, i.

<sup>7</sup> *Psahim*, 49b.

<sup>8</sup> *Brakhoth*, 10b; *Ybamoeth*, 15a (Rashi); *Qiddushin* 40b; *Shir Hashirim R.*, ii. 31.

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“Thou shalt love thy friend (not thy neighbor)” to imply “and hate thine enemy,” as Matthew attributes to the tradition of them “of old time” (*Matt.* v. 43),<sup>9</sup> seeing that this would be in keeping with the manners of R. Aqibah’s construction of the law.<sup>10</sup>

Not so Hillel and those who belonged to his school. Believing moral goodness to be the basis of Judaism, and desirous to spread this doctrine among the outside world, he emphasized the “spiritual” rather than the “practical” side of his religion.<sup>11</sup> It is to him that we are indebted for the canonization of Ecclesiastes. For knowledge he regarded as the highest aim of man, and his life-long ambition was to “love the people and bring them nigh unto the law.”<sup>12</sup> In an age when legalism held sway, Hillel was a dauntless defender of liberalism, reserving his rigorism for cases which involved the peace of the home and the sanctity of the family life.<sup>13</sup>

<sup>9</sup> Cf. Spinoza, *op. cit.*, p. 333.

<sup>10</sup> *E. g.*, *Psahim*, 22b; *B. Qama*, 41b:

את ד'אלהיך תירא: לרבות ת"ח.

<sup>11</sup> See *B. Bathra*, 10b.

<sup>12</sup> Cf. *Yadaim*, iii. 4; *Eduyoth*, v. 3; *Aboth*, i.

<sup>13</sup> See Mielziner, *Jewish Law of Marriage and Divorce*, N. Y., 1901, p. 119; Philipponson, *Israel. Religionsl.*, iii. 255.



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In consonance with his principles, Hillel recognized no authority higher than the people. He, upon whom his successor looked as on a second Ezra, idolized the masses. Those uncouth and unsophisticated "Ame Haarez" might yet be in the possession of the truth even as a heap of rubbish might hide a glowing coal. He could never be happy except in their midst, and their observances he watched with the intense interest of a folk-lorist. From the very outset of his career their Minhagim were to him laws which he never hesitated to appeal to in cases of emergency, for, he used to say, even if they are not prophets, are they not the descendants of the prophets?<sup>14</sup> No wonder that he won his way to the people's heart, and his decisions were preferred to those of Shammai; that it was not till a much later period, and then only by the Qabbalist exclusionists like R. Isaac Luria that the belief obtained that, at the Millenium, Shammaism will supersede Hillelism.<sup>15</sup> It was through Hillel's influence that Judaism remained, for some time at least, a Synagogal rather than a Church religion, a religion which is

<sup>14</sup> *Sukkah*, 20b; *Aboth*, iii.; *Tosephtha Brakhoth*, ii.; *J. Peah.*, viii. 6; *J. Psah.*, vi. 1.

<sup>15</sup> See "Miqdash Melekh" to *Zohar Breshith*, p. 176.



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unfettered by a creed, not formulated by the few, but is the expression of the spirit and conviction of the entire people of Israel.

On these diverse and diverging tendencies, the one priestly and legalistic, the other prophetic and liberal; the one standing for the letter, the "fixed," the other for the spirit, the "free," are based all the institutions of Judaism, to enumerate which would be to re-write the history of Oral Law. Orthodoxy and reform can equally fill their quiver from the Talmud with what would best suit their cause. The statements contained therein are, to use Froude's expression, "like to a child's box of letters with which we can spell any word we please." We need but pick out such facts as will serve our purpose, we need but let alone and say nothing about those we have no use for, and we shall find no difficulty in gaining our point, be it what it will. Thus it is equally easily demonstrable from the Talmud, as it is from the Bible, that Judaism is founded on the letter of the law or that it emanates from the life and pulse-beat of the people; that either orthodoxy or reform, or both, are "historical." The same Talmudic passage which preserves the views of some Rabbis that an "Am Haarez" is one who has no

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*mzuzah* on his door, lays no *tphillin*, or reads not the *Shmá*, contains also the opinions that only he deserves the opprobrious epithet who educates not his children or associates not with and has no reverence for the learned.<sup>16</sup>

But one salient feature must be recognized by all, and this is that the great majority of the Talmudists never tolerated a "scheme of salvation" foisted upon the people by pretending ambassadors of God on earth. "The Lord Himself obeys the behest of His creatures" is one of their bold sayings, and another, a little more figuratively, "It was not the priests who carried the Ark, but the Ark which drew the priests."<sup>17</sup> In almost all their legal and ritual decisions they kept abreast with their times. Mosaic laws which became obsolete or unsatisfactory were unhesitatingly abrogated. A truly inspired man, we are told, may abolish any law of Moses save, of course, the unity of God. It is true, some old laws were propped up as it were (*Syag*) and kept from falling, but the utmost caution was taken not to make them oner-

<sup>16</sup> *Brakhoth*, 47b; see also *B. Mzia*, 33b, and *Shir Hashirim R.*, ii. 4, and read Montefiore's interesting chapter on "The Law and its Influence," *op. cit.*, c. ix., esp. pp. 499 (note 1), and 501 (note 1).

<sup>17</sup> *Shmoth R.*, xv. 20; xxxvi. 3.

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ous on the people. For the Torah, they would say, was merely "like wheat to be ground to flour, like flax to be spun into cloth"; it can be renewed or altered when required, in fact will be renewed or altered in the days of the Messiah.<sup>18</sup>

In deliberating whether to abrogate or innovate, the Talmudic doctors were guided by one principle, "the Torah was not intended for ministering angels."<sup>19</sup> Whatever, therefore, was not promoting the welfare of the majority became *ipso facto* null and void, and would be entirely discarded or, as was more often the case, connived at when disregarded. They knew that certain regulations if enforced would only antagonize the people and lessen their respect for the majesty of the law. Their maxim was *ut res magis valeat, quam pereat*. If a law must be broken let it be unintentionally or unwittingly,<sup>20</sup> and hence they frowned down

<sup>18</sup> *Brakh.*, 20a (Rashi); *Mgillah*, 3b; *Siphri*, 175; *Sanhed.*, 90; cf. *J. Brakh.*, ix., with *Aboth d'R. Nathan*, i.; *B. Qama*, 79b; *B. Mzia*, 6; *Brakh.*, 60b; *Tanna d'Be Elijah*, ii. 2; *Mid.*, *Thillim*, c. 146; *Sanhed.*, 90: בבל אם יאמר לך נביא עבור על דברי תורה שמע לו חוץ מעכו"ם.

<sup>19</sup> *Brakhoth*, 25b.

<sup>20</sup> *Shabbath*, 44a, 153a; *Beza*, 30a (see Rashi). So also in Greece, it was not Solon but the people who abolished the laws of Draco: *Draconis leges . . . non decreto jussuque, sed tacito illite rateque Atheniensium, oblitteratae sunt. Aulus Gellius*, iii. 18.

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any attempt to burden the people unnecessarily. To avoid troubling the masses (*Torah Zibbur*), laws were altered, rituals shortened, and things tolerated which would have been egregious had they affected an individual only.<sup>21</sup> Not to disturb the laborers in their useful pursuits special provision was made for their benefit about reciting the *Shmá* or reading the law; the awe-inspiring day of Atonement was arranged so as not to fall on a day preceding or following the Sabbath, while the New Year holy-day was adapted to the need of the "people of the country" to enable them to celebrate it with the least sacrifice of time or comfort.<sup>22</sup>

Such were the principles which actuated many of the Talmudic Rabbis, and they were in accord with the exigencies of their times. While Israel was still in possession of its soil, the "voice of the people" though always heeded was nevertheless ancillary to that of the ruling prince, the officiating priest or the warning prophet (cf. 1 *Sam.* ix.

<sup>21</sup> *Brakhoth*, 4b, 12b, 16a, 27b, 31a; *Shabbath*, 35b; *Shmoth R.*, xvi. 4; so also *Brakh.*, 19b:

משום כבוד הבריות נדחה ל"ת שבתורה  
*B. Bathra*, 60b: 'אין גוזרין וכו'.

<sup>22</sup> *Rosh Hashanah*, 35a, and see Joseph, *Judaism as Creed and Life*, London, 1903, pp. 317-18.

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4-22). The bond of a common political centre was strong enough to hold and weld them together, and religion was chiefly a tie between man and God. But with the dispersion Judaism entered upon a new career. It ceased to be merely or chiefly a covenant between God and Israel. It had to serve also as a compact between Jew and Jew. And strangely enough that end was attained not, as we would expect, through absolute uniformity, but, on the contrary, by every community being allowed a certain latitude to adapt itself as best it could to its environment.

The canonization of the Bible threatened to produce a stereotyped and fixed Judaism, with all its consequent evils. There they were written in the Book of the Law, the "statutes, laws, judgments and commandments," all seemingly equally binding, none to be added or subtracted. "It is not in heaven" (*Deut.* xxx. 12) was construed by some to mean that the Torah in its entirety was now on earth and nothing, therefore, should be done to change it.<sup>23</sup> Fortunately the majority

<sup>23</sup> Yalqut *Bhuqothai*, 682; *Nizzabim*, 942; and see *Makkoth*, 24: תרי"ג מצות נאמרו למשה בסיני; *Erubin*, 21b; *Gittin*, 60b; *Tanhuma*, 58, 3; *Shmoth R.*, lxvii. 12; and see Taylor, *Sayings of the Fathers*, Cambridge, 1897, pp. 105-109.

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boldly put aside whatever proved distasteful to them, or impeded their progress. The people made their own laws by tacitly modifying those in existence, or as tacitly introducing new ones. To the *leges scriptæ* they added *leges non scriptæ*. And thus, according to the Talmud, originated the Oral Law—that expression of Jewish consciousness—which continues to this day. For its sake it was that God made His covenant with Israel, say the ancient Rabbis; it was too holy to be written in books “to the making of which there is no end.”<sup>24</sup>

By thus laying stress on the Oral Law, and by declaring the words of the Rabbis of equal importance, if not of as sacred in origin, as the words of the prophets,<sup>25</sup> Judaism escaped the fate of Sadduceism and, many centuries later, of Qaraim. It was to counteract the effect of a written code that the Rabbis assiduously cultivated the study of traditional law. Little did the Gospel writer think that there was more congratulation than calumny in his reproach that the Pharisees have “made the commandments of God of no effect” by their tradition (*Matt.* xv. 6). It is

<sup>24</sup> *J. Brakhoth*, i. 4: חמורין דברי זקנים מדברי נביאים.

<sup>25</sup> See Smolensky, *Am 'Olam*, “Hashahar,” III. 554-561.



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worthy of note that the Sadducees rejected tradition because it conflicted with their policy. They constituted a military aristocracy and their aim was to foster a martial spirit among the people. But this aim could not be promoted by the doctrine of Immortality which makes us care less for this world than for the future world; it could not be attained by the laws of purification which require time for their observance; it certainly could not be reached through the ascetic Pharisaic teachings concerning the subjugation of the animal nature so indispensable to a soldier. That these were just the principles on which Hillel, liberal in everything else, insisted the most, and that the people would recognize no judge except from the Hillelites, or that the peace-loving R. Gamaliel's Synhedrion in Yamnia should follow closely Hillel's decisions,<sup>26</sup> are evidences that it was not religious but political principles that formed the storm-centres in those troublous times, and that it was not creed and custom but policy and expediency that then tore Israel into "sects."

But the Bible was not long to remain the only written code of Judaism. Numerous Rabbis be-

<sup>26</sup> *Eduyoth*, iv. 1, 6, 11, v. 2; *Psah.*, 15b; Weiss, *Mkhilta*, Int., pp. v.-viii.; Steinschneider, *Hebrew Literature* (Heb. tr. Malter, Warsaw, 1897), p. 36.



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gan classifying and writing down their stock of traditional lore, and spread them among the people through their disciples. Various experiments in this direction were made by Rabbis Eliezer b. Jacob and Eliezer b. Hyrkanos of the second generation of Tannaim, Aqibah of the third and Meir of the fourth—nearly all Shammaites, the class which stood pre-eminently for uniform and conservative Judaism.<sup>27</sup> And the detrimental effect soon made itself felt. Those who inherited the words but not the wisdom of their masters waged war against each other, opinions and statements of conflicting codes were, whenever practicable, suppressed or destroyed<sup>28</sup> and, in the words of the good R. Simeon b. Johai, “the Torah has almost been torn in twain.”<sup>29</sup>

At this juncture there appeared a man fully equipped for the task of maintaining the integrity of Judaism. Refined and liberal, the father of him who laid such emphasis on *Derekh erez*, or good behavior, R. Yhudah advocated a “free,” unhampered, ethical and ceremonial religion. He,

<sup>27</sup> Friedman, *Mkhilta*, Intr., p. xxxviii.; Weiss, *op. cit.*, I. 152, n. 1; Zunz, *Gottesd. Vortr.*, p. 46.

<sup>28</sup> Weiss, *op. cit.*, II. 80-1, 165.

<sup>29</sup> *Sanhed.*, 88b; *Shab.*, 138-9; cf. J. *Sanhed.*, iii.: אלמרי נתנה תורה חתובה וכו'.

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too, compiled tradition, wrote *Mishnayyoth*, and devoted to them the best part of his life. Yet how different his from those of his predecessors and contemporaries. The *Mishnayyoth* of even R. Meir, the most progressive of Tannaim, the equal admirer of the agnostic Elishah b. Abuyah and the zealous Aqibah b. Joseph, were mainly a concatenation of decisions for practical purposes. But R. Yhudah never intended to foist on his co-religionists a code of law. He included in his great work opinions which frequently conflicted with each other and even with his own, and gave in it not an inconsiderable place to legendary lore, or *Agadah*. In accepting or rejecting the data at his disposal he allowed himself to be carried away neither by the onesidedness and bias of a fanatic nor by the rashness of a radical, but judged solely with the cool deliberation of a candid critic;<sup>30</sup> as if to him Judaism was a body of beliefs and practices with bondage to none in particular.

Such a work was in harmony with the genius of the Jewish people, and no wonder that it was favorably accepted by all. No wonder that while the other *Mishnayyoth* sank into oblivion or, like the "Book of Yashar" and the "Wars of Yah-

<sup>30</sup> Weiss, *Dor*, II. 183, 262.

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veh," left behind them only a name, R. Yhudah's remained proof against the ravages of centuries. Yet it was far from being an unmixed blessing. A work coming from a person of R. Yhudah's rank carried with it the weight of authority and thus defeated the end for which it was written. Even his very laudable intention in including all manner of diverse views resulted in a dangerous snare, the attempt to reconcile them, and Weiss justly remarks that here are to be detected the first symptoms of what eventually culminated in *Pilpul*, or casuistry *par excellence*.<sup>31</sup> Like the Book of Deuteronomy, the Mishnayyoth may also be described, in the words of Driver, as a "reformulation, and adaptation to new needs, of an older legislation." Their author, too, aimed to deepen and spiritualize the intellectual life of the Jew. But as the former indirectly promoted the principles of the priesthood, and was instrumental in, if not the foundation of, the legislation of "P,"<sup>32</sup> so was the spread and popularity of the latter the direct cause of the "Talmud" and what ulti-

<sup>31</sup> Traces of *Pilpul* can, however, be noticed even in the Bible. See *Num.* ix. 6-15; xxvii. 1-11.

<sup>32</sup> Cf. Cornill, *Der Israel. Prophet.*, 88-91; Ryle, *Canon*, p. 63 f.; Driver, *op. cit.*, p. lx. (note).

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mately resulted in the "Yad Hahasaqah" and "Shulhan 'Arukh," as we shall see in what will follow.

### IV.

But Judaism would not be confined to a written code, even though it came from the saintly R. Yhudah. It continued growing and developing, all attempts to the contrary notwithstanding. With the Mishnah—an expanded form of the Torah—as a nucleus, it began to produce that stupendous cyclopedia of Jewishness, the *Talmud*, a miscellany of all shades of views, orthodox and heterodox, fanatic and agnostic. The traditions committed to writing by the great Nasi were again "made of no effect" by newer and later traditions, and the additional burden could curb but little the spirit of independent Judaism. The various communities followed their favorite Minhagim as of old. "Go and see how the people conduct themselves," "adopt the customs of the place thou livest in," "change not the customs of thine ancestors"<sup>1</sup>—such are a few of the legal and ritual maxims which abound in the Talmud.

<sup>1</sup> See *Erubin*, 14b; *J. Psah.*, xli. 5; *Mgil.*, ii. 2; *Tanh.*, xvii. 2; *Bresh. R.*, xlviii. 16, xciv. 4.

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So also Hillel II. (*cir.* 350 C. E.), a true scion of the great ancestor whose namesake he was, announced to the extra-Palestinian Jews the adoption of the calendar in this manner: "Although we have made you acquainted with the order of festivals, nevertheless change not the Minhag of your ancestors [to celebrate double holidays]," and unchanged it remained to this day.<sup>2</sup>

We need but note the etymology of the Talmudic term for custom to appreciate its significance and importance. *Minhag* (pl. *Minhagim* from *nahag*, lead, guide, conduct) is literally and figuratively synonymous with *Halakhah*,<sup>3</sup> both of which are autonyms with *Torah* (instruct, command). The latter was supposedly revealed, the former and especially the Minhag represents the crystallized conduct of the majority, or the choice of the people. The latter emanating from one or a few, aimed at uniformity; the former, being the natural and spontaneous outgrowth of the masses, encouraged and promulgated diversity.

And in agreement with what we observed above,

<sup>2</sup> See Graetz, *Hist. of the Jews* (J. P. S.), II. 573.

<sup>3</sup> Cf. Montesquieu, *Esprit des Lois*, xix. 9: Les manières plus fixes approchent plus des lois, and *Mgil.*, 28b: אל תקרא הליכות  
אלא הלכות.

See B. *Mzia*, 33a.

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the Minhag always carried off the palm of victory. We hear frequent protestations against the literal application of the law, but seldom of a Minhag, unless it was utterly absurd. Pitted against those who saw in the Mishnah the final effort of the genius of Judaism, who said with R. Aqibah, " ' All the days of the afflicted are evil ' (*Prov.* xv. 15) means the days of the Talmudists, ' but he that is of a merry heart hath a continual feast ' refers to the students of the Mishnah,"<sup>4</sup> were a host of others who applied to the former the passage " they saw a great light " (*Isa.* ix. 1) and predicted evil to those who clung to the letter of the law. And while the upholders of the " fixed " in Judaism frequently introduced new laws and rigorisms to support the old ones, those of a " free " or liberal turn of mind maintained that there were already more than enough prohibitions to justify additional ones. " The Biblical precepts," they said, " were intended merely as a *discipline ecclesiastique* and he, therefore, who regards them as paramount to *Halakhah* (here, as frequently, in the sense of Minhag) will never enjoy peace."<sup>5</sup>

<sup>4</sup> *Ybam.*, 109b; *Sanhed.*, 100b; *Tanh.*, lviii. 3.

<sup>5</sup> *Mid. Thil.*, xviii.; *J. Ndar.*, x.; *Bresh. R.*, xlv. 1; *Sanhed.*, 19b; *Ab. Zarah*, 64b; *Hagig.*, 10a.



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The Minhag not only defeated the laws with which it actually came in conflict,<sup>6</sup> it also defined them when they became dubious and uncertain. For instance, according to an ancient law the Shmá was to be read "when the priests assemble to partake of their Trumah." This they did at twilight. Twilight the people were accustomed to reckon from the moment when stars first appear. The priests, therefore, must have then entered the sanctuary to eat the Trumah, *ergo*, the Shmá is to be recited at the first appearance of the stars.<sup>7</sup>

Even those who were opposed to certain Minhagim, or regarded them only when recommended by a recognized authority, never ventured to suppress them.<sup>8</sup> For the sake of peace they tolerated many an observance even at variance with the accepted law.<sup>9</sup> But it was not policy alone. The Talmudic Rabbis could not, even if they would,

<sup>6</sup> J. *Ybam.*, xii. 1; B. *Mzia*, vi.; see Levinsohn, *T'udah b'Israel*, Warsaw, 1878, c. 65, and *Beth Yhudah*, Warsaw, 1878, p. 134, and cf. *Sukkah*, 38b: הלכתא איכא למשמע ממנהגא and Tosaphoth *ad loc.*: משום דמנהגא קרי ליה, והיכא (דנהוג נהוג) דקא נהוג לא נהוג.

<sup>7</sup> See Dembitz, *Jewish Services*, etc. (J. P. S.), p. 347 (n. 6); cf. J. *Brakh.*, vi. 1, and *Suk.*, 38b.

<sup>8</sup> *Taan.*, i. 4; cf. Rashi there with *Kthub.*, i. 1, and Tosaph., *ad loc.*

<sup>9</sup> *Mgil.*, 3a; *Ybam.*, 14b: לא תתגודדו : גא תעשו אגודות אגודות *Gil.*, 59a: מפני ד"ש.

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deny the sovereignty of the people in matters religious. Never was priest or prelate so handicapped as the Rabbi. Him whom the people did not choose to follow, ordination and versatility availed little or nothing: he would remain merely a teacher of old laws to be accepted for what they were worth. In the phrase of Chrysostom, "he had the primacy of honor, but not the supremacy of jurisdiction." Happy he who ingratiated himself with the people and won the heart of the public.<sup>10</sup> It was this that rendered Hillel victorious in spite of the fierce attacks of his adversaries, and that constituted R. Elai authority notwithstanding the cavils of his colleagues.<sup>11</sup> Many a community had, so to speak, its "patron saint" whose decisions, despite any protestations, it gladly accepted as final. And thus it came to pass that as in former times "the number of gods were like the number of the cities," so now the number of Minhagim was almost equal to the number of communities. Not only did the Babylonians differ from the Palestinians, they disagreed even among themselves. Galilee followed closely the usages of Jerusalem, the rest of Judea discarded

<sup>10</sup> See above, p. 6, and Mielziner, *op cit.*, pp. 22, 84.

<sup>11</sup> *Brakh.*, 22a; *Hul.*, 136b.

them,<sup>12</sup> even as the rest of Britain discards the particular customs of London. Samuel's decisions were accepted in Neherdea, while the whole of Babylon more or less complied with those of Rab,<sup>13</sup> and later authorities accepted it as a maxim that if, for instance, in Neherdea any rite was performed in accordance with the teachings of Rab, it is proof positive that it should be accepted by all and for all times to come.<sup>14</sup> It was not until after hard and persistent effort that the Rabbis succeeded in establishing anything like uniform dietary and Sabbath laws.<sup>15</sup> Rabbinical authority was so restricted that the humorists of the day would scoffingly remark, "The Rabbis will allow anything you allow yourselves,"<sup>16</sup> and Benjamin of Mehuza is reported to have exclaimed, "Of what good are the teachers of the Torah? They can neither allow us to eat ravens, nor forbid us to eat pigeons," meaning, says Professor Graetz, "that in spite of all their dialectics, they were unable to proceed beyond the circle of established custom."<sup>17</sup>

<sup>12</sup> *Kthub.*, 52b.

<sup>13</sup> Cf. *Ib.*, 54a; *Brakh.*, 39b; *Taan.*, 28b.

<sup>14</sup> Asheri, *Hammgaresh*, 117, 271: מרעשו בנהרדעא כרבי הלכה כרב.

<sup>15</sup> *Hul.*, 110a; *Shab.*, 130a.

<sup>16</sup> *Erub.*, 104b.

<sup>17</sup> *Hist. of the Jews*, II. 590; *Sanhed.*, 99b.

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Not always, however, did the principle of non-resistance work smoothly. Too often it rendered Judaism subject to the tyranny of the majority, the zealotry of the masses, who, in their commendable endeavor to do what is right, and believing that their performances were *ad majorem Dei gloriam*, heaped usage upon usage and custom upon custom, until the "fences" (Syagim) instead of protecting only obstructed real religion, and the eternal verities of Judaism were buried under practices of paganism. The juridical maxim, for example, that whenever no decision is given in favor of any law one is at liberty to form his own conclusion, was for greater safety construed that it is best to comply as far as possible with both.<sup>18</sup> The liberal statement that a thing once permitted forms a precedent for all time to come, was interpreted to intimate that similarly anything once prohibited remained so forever.<sup>19</sup> This was very distasteful to the more advanced Rabbis who ridiculed them as fools, daft saints, "fanatics that

<sup>18</sup> *Brakh.*, 39b: יוצא ידי שניהם; 44b: עבדנא ככולהו; *Sanhed.*, 27a; *Erub.*, iv. 6; *Ed.*, i. 4-6; cf. *Mid. Thil.*, xvii.: למה מזכירין דברי ב"ש ודברי ב"ה וכו'.

All this is probably founded on *Eccl.*, vi. 18.

<sup>19</sup> *Pсах.*, 56a.

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walk in darkness," persons whose pseudo-piety would annihilate the world.<sup>20</sup> For was it not the over-scrupulousness of Eve, in fearing not only to eat but even to touch of the Tree of Knowledge that brought death upon her and her offspring?<sup>21</sup>

Nor did some Rabbis relish the idea of being led by instead of leading the people. There is as much bitter sarcasm as earnest truth in their remark that "Elijah himself (the supposed authority on Tradition) would not be heeded were he to protest against an established Minhag."<sup>22</sup> Most of them, however, taxed their ingenuity to base existing customs on Biblical precepts. Adam, they proved, kindled no light on the Sabbath, and blessed God for the light after the Sabbath was over. Abraham observed the entire Torah, even *Erube Tabshilin*. Nay, God Himself visits the sick, buries the dead, prays, lays *tphillin*, and makes a feast when a child is accepted in the Covenant.<sup>23</sup> This was generally the way of the Shamaites. For instance, ever since the Sabbath became imbued with the sacerdotal spirit, offensive war was refrained from on this holy Day of Rest.

<sup>20</sup> *Erub.*, 63a, 64b; *Sotah.*, 20a; *Mak.*, 22b.

<sup>21</sup> *Yalq. Bresh.*, iii. 26; *Mid. Thil.*, i.

<sup>22</sup> *Ybam.*, 102a; *Mnah.*, 32a.

<sup>23</sup> *Yalq. Bresh.*, iii. 34; *Mid. Thil.*, i., xxxviii., liii., cxii.

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In the course of time not even defensive war was tolerated, and the pious preferred death rather than desecrate the Sabbath-sanctity with war and bloodshed of any sort.<sup>24</sup> But force of circumstances, especially during the declining days of the Commonwealth, made this custom impracticable. To refrain not only from defending themselves but even from attacking the enemy at an opportune moment for fear of Sabbath-breaking would entail dangerous consequences upon the whole nation. At such critical moments people would not listen to protests or arguments, for life is more imperative than law, and self-preservation more important than legal observation. Hence Sham-mai (who was, as we have seen, an ardent "Nationalist") legalized this form of Sabbath-breaking. He only turned "thou mayest" into "thou must," and the law concerning a siege (*Deut.* xx. 20) was adjusted to the requirements of the time.<sup>25</sup> Similar methods were pursued by R. Aqibah and others, and gradually even such minor customs as double holidays, drinking four cups on

<sup>24</sup> Schwab, *The Sabbath in Hist.*, I. i.; Josephus, *Antiquities*, II. xii. 1, VI. xiv. 2, XIV. iv. 2; *Wars*, II. xvi. 4; *I Maccab.*, II. 36-8, 41.

<sup>25</sup> Siphri, *Shophetim*, 203; *Shab.*, 19a. Cf. Jost, *Gesch. d. Jud.*, p. 327 (note).



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Passover night and chanting the Psalms were likewise shifted away back to the time of the prophets and patriarchs.<sup>26</sup>

And yet we will be far from the truth if we believe that the Rabbis were divested of the power of initiative altogether. Used with moderation and discretion their influence was immense and their very personalities were frequently potent factors in molding the "free" or the "fixed" religions in Judaism. Thus we see that R. Yhudah Hannasi permitted the use of oil bought from idolators, though it was believed that Ezra prohibited it; and Rabbah abolished the custom of giving tithes in Babylon, though it was believed that the prophets themselves recommended it.<sup>27</sup> Sometimes for the sake of good behavior they declared a custom to be a law and so it was accepted.<sup>28</sup> The admiration some of them inspired in the people was boundless, their very mannerisms being frequently lifted to the level of prescribed law. The Seder ceremony is really nothing more than a sort of Jewish "Eucharist," an imitation

<sup>26</sup> *Sanhed.*, 77b; *Psah.*, 117a: וחכ"א נביאים שבנו הן תקנו *J. Er.*, iii. 9; *Psah.*, x. 1.

<sup>27</sup> See *Yrushalaim* (ed. Luncz), VII. i.-ii. 47-9, 65-7; *J. Ab. Zar.*, ii. 8; *Bkhor.*, 27a.

<sup>28</sup> *B. Mzia*, 83a: "א"ל דינא הכי? "א"ל הן: "למען תלך בדרך טובים".

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of what some popular Rabbis, notably Hillel and Todos of Rome, used to do on that night.<sup>29</sup> Whatever R. Aqibah did, we are told, was adopted by everybody.<sup>30</sup> When Mar, exasperated at the hilarity of some guests he had invited to his son's wedding, broke an expensive cup, he little thought that unintentional act of his would in the future be given as a reason for a wedding ceremony observed to this day.<sup>31</sup> As long as only princes celebrated the anniversary of their ancestors' death, or named their descendants after them or their dead relations, it was only a *fashion* which left the populace unaffected, but as soon as the Rabbis began to conform to them, they became Minhagim, religious customs not to be transgressed.<sup>32</sup> A pious Talmudist practised putting on the phylacteries every week-day, and since then "woe to the arm that layeth not the Tphillin."<sup>33</sup>

Relying thus on their personal influence the Rabbis often recommended customs which hailed

<sup>29</sup> *Hag. Shel Pesah; Brakh.*, 19a.

<sup>30</sup> Toseph, *Dmai*, iv. Cf. *Bresh. R.*, vii.

<sup>31</sup> *Brakh.*, 31a, and Tosaph., "Aithi," *ad. loc.*; *Mid., Thil.*, cxxvi.

<sup>32</sup> See Rabinowitz, *Zunz*, Warsaw, 1896, p. 133.

<sup>33</sup> *Mid., Thil.*, ciii.

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from Persia or Parthia,<sup>34</sup> or, in conference assembled, abolished others though they had a Jewish origin. They called a halt to the zeal of some who recklessly devoted their entire property to charitable purposes.<sup>35</sup> They put a stop to the pomp and extravagance of funerals which sapped the marrow of the bones of the poor.<sup>36</sup> And not unseldom what they were unable to accomplish during life, they attained after death, as in the case of R. Eliezer who became the idol of the people after he passed away, and to whose practices they reverted in spite of the excommunication under which he died.<sup>37</sup>

Thus did *sanction* play its part in Judaism, but it was of a sort entirely different from that of the Church. In the latter it was arbitrary, in the former spontaneous. The Christian, regarding his ceremonies as expiatory or atoning, trembled at the thought of allowing himself or others to transgress them, and coweringly listened to Paul's

<sup>34</sup> *Bresh. R.*, lxxiv. 6; *Brakh.*, 8b; Schor, *Hehaluz*, vii. 39; Rabbínovitz, *Hammahanaim*, N. Y., 1888, 69-85. Cf.

הרי זה מדרבי

האמורי and אין זה מדרבי האמורי, and see Toseph. *Shab.*, vii.-viii.

<sup>35</sup> Graetz, *op. cit.*, p. 405; Weiss, *op. cit.*, p. 146. Cf. Montesquieu, *op. cit.*, xix. 25: "La vertu même a besoin de limites."

<sup>36</sup> *Kthub.*, 8b; *Moed Qatan*, 27b.

<sup>37</sup> See *Qohel. R.*, xii. 1, and "Ez Joseph," *ad. loc.*

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command, "Slaves obey your masters!" or called with Thomas à Kempis, "Dust, learn to obey." The Gentile's aspect upon religion generally is, in the words of Pascal: "Believe and be stupified at the same time"; and the maxim until lately universally accepted was, that "ignorance is the mother of devotion."<sup>38</sup> But to the Jewish mind, even at the time of the Talmudists, servility of any kind was repulsive and unbearable. If what was once a cavil ultimately became a creed, it was so by the consent of the *people*. They looked upon their Minhagim as optional, were conscious that there was no royal road to salvation, and tolerated not only diverse customs among themselves, but believed and hoped that "the pious among all nations have a portion in the 'World to Come.'"  
As if they would say with Whittier:

"Enough and too much of the sect and the name.  
What matters our label, so truth be our aim?  
The creed may be wrong, but the life may be true,  
And hearts beat the same under drab coats or blue."

### V.

It is a remarkable fact that Judaism was saved from stagnation by frequently being compelled to

<sup>38</sup> Draper, *Conflict between Religion and Science*, N. Y. 1875, p. 267 f.

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change its abode and accommodate itself to new surroundings. Wherever it remained for any considerable length of time it gradually became more and more tribal or national, its cosmopolitanism receded to the background, uniformity took the place of unity, and the current of custom became so hampered and impeded as to make change difficult and growth well nigh impossible. Fortunately, as the Rabbis already observed, before the sun of Judaism sets in one country it dawns in another. Babylonia, Spain, Gaul, Poland and America each in turn infused in it new life when the old spark seemed to near extinction, each in turn contributed to the progress and perpetuity of the religion of Israel.

The widespread of the Mishnah in Palestine was the harbinger of a Cimmerian darkness which was soon to cover the historic soil of Judea. Unconditionally subscribing to all therein set forth, never deviating in the least from the practices therein contained, Judaism, not long after the death of R. Yhudah Hannasi, appears to have become stiff and stolid, a mummy of its former self. But before its death knell was sounded, ere yet Palestinian Jews could say *la légalité nous tue*, "deliverance and enlargement rose from an-

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other place." In the words of Carlyle, the old skin never fell off before a new one has formed under it. The new abode was Babylonia. There, far from the spot which cradled it, and goaded on perhaps by the pride with which the Palestinian Jews treated on every occasion their expatriated coreligionists, the Mishnah, venerated but not worshipped, was accepted *cum grano salis*. There they cultivated a "higher criticism" of it, pointed out its redundancies and suggested emendations.<sup>1</sup> Let Palestinians still boast of their ancient glory and wisdom, and in the words of the former Judeans to the exiles on the Kebar call "Ye are far from Yahveh, we are the inheritors of the land" (*Ez.* xi. 15); claim that there is no Torah like *their* Torah; call R. Yhudah "saint" or "holy one"; put R. Aqibah on an equality with Moses; laugh at the Babylonians' stupidity and their dabbling in Miqra, Mishnah and Talmud, and seeing nothing great in Hillel save that he sat at the feet of *their* Shmayah and Abtalyon<sup>2</sup>; their greatness departed from them never to return again. The Talmud Yrushalmi, despite its system and orderly

<sup>1</sup> See Weiss, *op. cit.*, III. 20.

<sup>2</sup> *B. Bathra*, 158b, 12b; *J. Ab. Zar.*, vii.; *Psah.*, v. 3, vi. 1; *Yomah*, 9b; *Bresh. R.*, xvi.; *Vayiq. R.*, xiii. 4; *Bammid. R.*, xix.; *Yalq. Bresh.*, xxii., lxii.; *Mid. Sam.*, xvi. 8-11.



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arrangement, was soon to be almost superseded by the unsystematic but youthful Talmud Babli, and the harp of Zion was to be removed from Genesareth and the Jordan to the rivers of Babylon.

That Babylonia was at first the citadel of the "free" religion in Judaism there is abundant evidence to prove. Hillel, the father of the *Nsiim*; R. Hiyyah, the originator of the *Havayyoth* which shook the foundation of tradition; R. Nathan, the enunciator of the doctrine that one law may be broken so that others may be maintained;<sup>3</sup> these and many more of like calibre were Babylonians. The great R. Yhuda Hannasi has, perhaps unintentionally, well summed up the situation in his answer to R. Ishmael's question, "What preserves the Jews?" "In Babylonia," replied the Patriarch, "it is the *study* of the Torah, in the 'Land of Israel' it is their *giving* the tithes, and in other countries it is the observance of the Sabbaths and holidays." But this is even better illustrated in their views on *Minhagim*. The Palestinians, to whom every step recalled past greatness and present persecution, would naturally evince their bitterness on every occasion; while the Babylonians, who were hospitably entreated by the Persian, would, on the other hand, show their gratitude.

<sup>3</sup> *Mkhilta*, "Ki Tissa."

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As a consequence, the former never sold weapons to non-Jews, the latter did because, as they said, "they protect us."<sup>4</sup> The former would handle no meat or bread of the Gentiles, the latter had not the least scruples about it.<sup>5</sup> In general, the former, having nothing but the past to console them, clung to customs which antedated tradition; the latter, full of expectancy, were on the *qui vive* for anything new, and recked little for the Minhagim which were in their way of gaining a firm foothold in their adopted home. As R. Johanan b. Zakkai's Synhedrin in Yamnia was a protest against the exclusiveness of Jerusalem and as he, by assuming that his court had the right to judge criminal cases, won a victory for liberal Judaism, so were the Babylonian Yshiboth, or colleges, and their juridical independence a great achievement for progressive Judaism. It was there that Mar Samuel, himself, according to some, a victim of Palestinian prejudice, proclaimed the important principle that the *lex loci*, the laws of every place, must be followed by the inhabitants of that particular place,<sup>6</sup> a legal maxim which revolutionized

<sup>4</sup> *Bresh. R.*, xi. 3.

<sup>5</sup> *Ab. Zar.*, 15, 16; *Psah.*, 30b; *J. Psah.*, ii. 2.

<sup>6</sup> *Gittin*, 10b: דינא דמלכותא דינא. According to Rappoport, Samuel never left Babylonia, *Erekh Millin*, Prague, A. M. 5612, p. 222. See also Fessler, *Mar Samuel*, Breslau, 1879.

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Talmudic jurisprudence. It was there that dietary laws were little observed, new customs came into being, old ones, especially when not in consonance with their present conditions, utterly disappeared, and that Judaism first commenced shaking off the shackles of rigid tradition.<sup>7</sup>

But that the spirit of Babylonian Judaism might not run riot and exceed the bounds of propriety, it was held in check by Abba Arekha ("Rab") and the graduates of or sympathizers with the

<sup>7</sup> *Hulin*, 95b; *B. Qama*, 80a; *Gittin*, 6; *R. Hash.*, 18b, and see Weiss, *op. cit.*, III. 321-3. Compare the following views of the Palestinians and Babylonians respectively:

Palestinian (*Eduy.*, v. 1): אין בי"ד יכול לבטל דברי בי"ד חברו.  
 Babylonian (*R. Hash.*, 25a): כל ג' וג' שעמדו בי"ד על ישראל כבי"ד של משה.

P. (*J. Psah.*, vi. 1): כל תורה שאין לה בית אב אינה תורה.  
 B. (*Erub.*, 21b): „חדשים גם ישנים“: שמחדשים תורה בכל עת.  
 P. (*J. Brakh.*, ix.): אם נזדקנה אמך עמוד וגדרה.  
 B. (*Aboth d'R. Nathan*, ii.): כל המוסיף גורע וכו' טוב י' טפחים ועומד מה' ונופל

דברים שתראה הם מיותרים... אף הם נתנן: P. (*Qohel. R.*, v. 7).  
 למשה מסיני.  
 ירובעל בדורו כמשה בדורו... ואנן מאברהם: B. (*R. Hash.*, 25b).  
 ניקום ונגמור?

מיום דגליתון מארעיכון נטלה אורייתא דמשה וכו'. P. (*Shab.*, 116).  
 „וכתב משנה תורה“: כתב הראוי: B. (*Sanhed.*, 21a; *A. Z.*, 4b).  
 להשתנות.

כל חפורין גדר של חכמים פורעניות באין: P. (*Siphre, Deut.*, 48).  
 עליו.

אל תעשה הגדר מרובה על העיקר וכו': B. (*Aboth d'R. N.*, i.).

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Yshibah at Sura. This college stood for the Palestinian principles, and was called the "little sanctuary," as the Palestinian colleges were known as the great sanctuaries.<sup>8</sup> Babylonian Judaism, however, was affected even more by the compilation of the Talmud. For, notwithstanding the heterogeneous views, the manifold and diverse statements, the denial of absolute authority, the scope and freedom of its discussions, neither could the Talmud Babli remain the sole repertoire of Judaism.<sup>9</sup> Before yet the last of the Amoraim had put the finishing touches to their colossal work, many and various new Minhagim sprang up among the different communities. As Professor Schechter has it, "there seems to have been a Talmud before, and another after the Talmud." Tradition continued to take its course, but not without difficulty. In addition to the Torah and Mishnah, and like them, the hitherto Oral Law now became a veritable Written Law in significance as in appearance, in everything except in name, and contributed its quota to hampering the development of Judaism. Gradually the sense of the proper gauge of value

<sup>8</sup> *Mgillah*, 29a.

<sup>9</sup> *Studies in Judaism* (J. P. S.), p. 196. See Zunz, *Gottesd. Vort.*, p. 32.

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was lost or dulled, and they could no more distinguish Minhag from Halakha.<sup>10</sup> And six centuries later, a man like Maimonides made the following assertion: "Everything in the Talmud Babli is mandatory to all Israel, and any city or province may be forced to comply with all the customs, obey all the laws, and observe to do the ordinances contained therein."<sup>11</sup>

Thus at last was the "fixed" element in Judaism to gain supremacy in Babylonia as it did before in Palestine. The compilation of the Talmud, cruel caliphs without, and no less cruel exilarchs within, rendered concentration of authority inevitable and freedom of Minhagim inadvisable. The customs of the "two colleges," of Sura and Pumbeditha, were made imperative for the Jews all over the diaspora. And the Qaraites' total disregard of tradition enhanced greatly the power

<sup>10</sup> Cf. the following:

ר' יהודה אמר שמואל הלכה כר' אב"י	}	<i>Erub.</i> , 62b.
" " מנהג " " ר' הונא		
" " נהגו " " ר' יוחנן		

ר' יהודה אמר רב הלכה כר' מאיר	}	<i>Taán.</i> , 26b.
" " מנהג " " רבא		
" " נהגו " " ר' יוחנן		

<sup>11</sup> *Yad Hahazakah*, Intr.

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of the Geonim,<sup>12</sup> even though, in more cases than one, they were far from deserving the reverence in which later generations held them because of their illustrious appellation. Rab's constant terror "lest the Torah be forgot"<sup>13</sup> became endemic. And because of this every trivial Minhag of a Gaon was indiscriminately accepted by all. The customs of Qapparothe, or pseudo-sacrifices, of semi-mourning between Passover and Pentecost, of reading the weekly portion of the Torah in obsolete Aramaic,<sup>14</sup> and many more like these then came into being and remained to this day. Prayer ceased to be a spontaneous overflow of the emotions. He who leaves out even the least part of the Haggadah, or Passover ritual, says Natronai Gaon, is "an apostate, a schismatic, an underminer of the institutions of our sages (of blessed memory); such an one despises the Mishnah and Talmud, and should be excommunicated and expelled from the midst of the congregation of Israel."<sup>15</sup> Solely on his own authority R. Amram compiled and introduced a prayer book which he declared was final and unalterable, and deviation

<sup>12</sup> Pinsker, *Liqqute Qadmonioth*, "Nispahoth," 34, 35.

<sup>13</sup> *Shab.*, 138b.

<sup>14</sup> See *Tur O. H.*, 145; *Hazzophe l Hammagid*, III. no. 34.

<sup>15</sup> See Weiss, *op cit.*, IV. 16, 17 (n. 4, 8), 115, 166.



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from which he branded as flagrant heresy.<sup>16</sup> For the words of the Geonim were as binding as, and could no more be disregarded than, those of Moses and the prophets: he who disobeys the least of them sins against God and His Word.<sup>17</sup>

This state of affairs, however, was, as usual, not of very long duration. "Free" Judaism, sometimes cowed yet never conquered, rallied itself again, nor was the voice of the people like a voice crying in the wilderness. During the deanship of Mar-Rab Kohen Zedeq (c. 850), Jewish congregations reasserted their autonomy. He never compelled a community to subscribe to the Minhagim of Sura or Pumbeditha. When consulted about a custom he would only state how it is or was, never how it should be, observed.<sup>18</sup> He was surpassed in this respect by his successor, who expressed himself in no uncertain language that "it is advisable for each congregation to maintain its own Minhagim."<sup>19</sup> Rab Hai, dean of Pumbeditha, and last but not least of the Geonim, called the usages of some of his colleagues foolish and

<sup>16</sup> See Dembitz, *op. cit.*, p. 372 (note 3); Graetz, *op. cit.*, III. 178.

<sup>17</sup> *Sha'are Zedeq*, Int.

<sup>18</sup> *Tur Y. D.*, 265.

<sup>19</sup> Weiss, *op. cit.*, IV. 113 (n. 7).

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superstitious, and practised many a rite condemned by his predecessors, on the principle that anything which the Talmud does not expressly prohibit is permissible,<sup>20</sup> while Samuel b. Haphni went still further and disregarded custom and even creed which he found incompatible with reason.<sup>21</sup>

Thus are the two distinct tendencies, the centralizing and expanding, the "fixed" and the "free," which we noticed in the Torah, Mishnah and Gmara, discernible also in the *Sheeloth Uthshuboth*, or "Questions and Responses" of the Geonim. Based on the three codes already mentioned, these Responsa are yet not devoid of entirely new material. The two sets of forces which we found operating in Palestine, remained in essence the same in Babylonia, and we shall recognize them again in Spain, Gaul, Poland and the United States.

But Persian Judaism, too, was doomed to succumb to the fate of Palestinian Judaism, and in their struggle for supremacy the Babylonians also resorted to the means employed by the Pales-

<sup>20</sup> See *Haeshkol*, I. i., II. 67, iii.; *Tur Y. D.*, 116; Frankel, *Mimmizraim*, pp. 51-53: אמונת הבל ומנהג שטות.

<sup>21</sup> Graetz (Heb. tr.), *op. cit.*, IV. 14 (n. 4): דברי הקדמונים אם הם סותרים אל השכל אין אנו חייבים לקבלם.

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tinians before them, but all in vain. In vain did they claim that the Messianic era was to be inaugurated by them, that their Samuel was not inferior to the Prophet Samuel.<sup>22</sup> Judaism for its safety and stability had to wander thence and seek refuge in the lands bordering on the Mediterranean. Its advent was marked by the code-commentary of R. Isaac Alfasi, in the eleventh century, which shows distinct deviations in many places from the accepted rulings and interpretations of the Persian Geonim. That it was timely and in agreement with the demands of the *people*, which the latter disregarded, is shown by the welcome it received, and by the fact that through its influence all similar works compiled in the course of three centuries were consigned to oblivion.<sup>23</sup> However, it being both a code of and a commentary to the Talmud, R. Isaac's work contributed to strengthen the position of both the tendencies in Judaism. As a code it appealed to the conservative element and was the forerunner of the *Shulhan 'Arukh*. It was regarded as infallible by the Jews in Spain, and even Maimonides dared not differ from it save in

<sup>22</sup> *Tanhuma*, lviii. 3; *Sanhed.*, 4a; Rapaport, *op. cit.*, p. 221f.

<sup>23</sup> Graetz, *op. cit.*, III. 286.

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a few insignificant instances.<sup>24</sup> But as a commentary which made the study of the Talmud less arduous, it was instrumental in restoring the independence of the people and curtailing the power of the Rabbis. It was thus, in a sense, the trunk from which were to sprout two branches pointing in different directions—the Code of Maimonides and the Commentaries of Rashi.

<sup>24</sup> See his *Com. to Mishna*, Intr.: ואין תפיסה עליו (הרי"ף)  
אלא בהלכות מועטות לא יגיעו עד עשר בשום פנים.



## PART FOUR

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### MULTIPLICITY OF MINHAGIM

Where solemn forms the truth encrust,  
The real hides beneath pretense;  
And ages of tradition's dust  
Still blind and choke the moral sense.

—BARRINGTON.

Deterred . . . from abrogating what is useless, simplifying what is complex, or determining what is doubtful, and always more inclined to stave off an immediate difficulty by some patch-work scheme of modifications and suspensions than to consult for posterity in the comprehensive spirit of legal philosophy, we accumulated statute upon statute, and precedent upon precedent, till no industry can acquire, nor any intellect digest, the mass of learning that grows upon the panting student.

—HALLAM *on English Law*.

## VI.

With the beginning of the second Millenium of the Christian era a radical change took place in the religious history of Israel not unlike that which occurred in our political history between the Republican and Democratic parties. The very causes which formerly contributed to conservatism or liberalism, the "fixed" or the "free," hence-



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forth changed parts. While the comparative hospitality which the Jews received at first in Persia tended, as we saw, to produce an expansive Judaism, in Spain it was the reverse. The Jews in the Iberian Peninsula were in general too infatuated with the pursuit of the "wisdom of the Gentiles," who extended them the hand of fellowship, to have either the leisure or the desire for a better understanding of their religion. In order to protect themselves against Christian or Mohammedan influence to which they were exposed, they delegated their religious knowledge to their Rabbis, whose precepts obtained a sincere though unintelligible obedience, and whose decisions became established law. It was in Spain, therefore, that the first and most successful attempt to divorce life from religion was made. It was there that Judaism began to concentrate itself within the narrow confines of a code, that its *sanction* approached nearest to the sanction of Catholicism.

The counter-check now came from those countries where, as is generally assumed, rigidity and formality reigned supreme. French and German Judaism, imported thither through Italy from Palestine now came to the rescue.<sup>1</sup> Lunel, Mont-

<sup>1</sup> Weiss, *op. cit.*, 312, 313.

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pelier, Toulouse, Lyons, Marseilles, Paris, Metz, Spiers, Worms and Cologne became beehives of Jewish learning. And after three centuries of assiduous cultivation of the study of the Talmud, there appeared on the stage one who more than R. Gershom deserves to be called the "light of the exile"—Rashi, or R. Shlomo Izhaqi, who wrote the best commentary to the Talmud ever written.<sup>2</sup> He was a man most admirably equipped for such an arduous undertaking, a past-master of the Law, Mishnah and Talmud, one who thoroughly grasped and comprehended the genius of Judaism and understood the needs of his people. *He* would not codify, he would only comment. Unlike R. Isaac Alfasi, he would not limit himself to the "timely topics," the Talmudic parts treating of customs still in vogue, but would make all of it accessible to the people in the clearest and most concise manner possible. An ardent lover of the "free" element in Judaism, of the unity which can be obtained through the sacrifice of uniformity, he discouraged as much as he could the extra piety which tended to widen the gulf between the independent congregations, and would not allow the Minhagim of one community to be imposed upon

<sup>2</sup> See my article *Parshandatha*, "Israelite," Nov. 9, 1905.

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another.<sup>3</sup> Never since the days of the great Hillel arose one like Rashi in Israel.

And the numerous admirers of Rashi for a long time after his death followed in his footsteps. It has been shown by Weiss that the *Tosaphists* were originally merely commentators, or, as their name implies, "supplementors" to Rashi. Though later generations accepted their decisions as final (*Posqim*), they never intended to be authoritative. Surely, R. Jacob Tam, the head of that august body, remained loyal to the teaching of his grandfather Rashi. He possessed the delicate sense to distinguish between a Minhag which was useful and one which was impeding and subversive.<sup>4</sup> In one of his epistles he entreats R. Mshulam not to cause dissention among the congregations of Israel by forced uniformity, and to evince his high regard for local customs he declared, against the Talmud, "to recite a blessing over a Minhag."<sup>5</sup>

It was thus that the devout, "non-questioning" Rabbis of France and their German colleagues were fostering the "free" element in Judaism, the

<sup>3</sup> *Pardes*, I, 56, 154, 175, 242; *Ozar Nehmad*, II. 178.

<sup>4</sup> *Shilte Haggiborim*, p. 33; see *Tosaph. Brakh.*, 48a.

<sup>5</sup> *Sepher Hayyashar*, p. 73. Cf. *Suk.*, 44, and *Tos. Brakh.*, 14a ("Ymin"), with 32b ("Mistabra").

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philosophising and enlightened ones of Spain—the “fixed.” Palestinian Judaism, but that of Jerusalem rather than of Yamnia, was gaining ground in Spain and the Barbary lands, and we see this also in the constant, though perhaps unintentional, attempts of Rabbis Hananel and Alfasi to make the Talmud Yrushalmi equal if not paramount to the Talmud Babli.<sup>6</sup> Were it not for the counter-current which flowed from Gaul and the “wise ones of Lothair,” Judaism might have become a homogenous religion or torn into numerous sects. But even as it was the balance was almost upset by one who, full of earnest anxiety about the welfare of his religion, became the innocent victim of a contention unprecedented in the annals of its history—Moses Maimonides.<sup>7</sup>

“Had the editors of the Talmud prefaced it with a paragraph never so short on the aim and end they had in view when undertaking their Herculean task, how much strife and disputation might have been obviated. Alas that such was not the fashion in those days!” This sincere plaint of one of the latter day Rabbis<sup>8</sup> would be a cause for

<sup>6</sup> See on *Shabbath*, 27 (מעשה רב), 74, 127, 131.

<sup>7</sup> See the author's article, *Moses the Second*, in the “American Israelite,” May 11, 1905.

<sup>8</sup> Gumpel, *Ysode Hattorah*, c. 15.

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gratulation in the case of Maimonides. The main source of the furious strife which followed the publication of the *Yad Hahazaqah*, was a sentence or two in the introduction thereto wherein Maimonides intimated his intention to supplant the Talmud.

Maimonides was a born codifier. For this reason he regarded the Talmud as inferior to the Mishnah to the interpretation whereof he devoted the best years of his early manhood, and the Babli to the Yrushalmi.<sup>9</sup> He was aware of the dangers of writing down the Oral Law. He knew full well that by compiling the Mishnayyoth and the Gmara the Tannaim and Amoraim defeated their own end, and fell in the very snare they tried to escape from.<sup>10</sup> But as the evil already existed, the less of it he thought the better. He would, therefore, put in every Jew's hand a guide book, containing in a nutshell the sum-total of the Jewish religion. He would analyze and systematize Judaism even as he did his problems of astrology, apply to it the hard and uniform laws of philosophy, and consolidate his dispersed brethren not

<sup>9</sup> See *Hilkhoth Oriath Shmá*, iii., *Ndarim*, vii., *Méila*, vi., *Yom Tob*, viii., and "Rabad."

<sup>10</sup> *More Nbukhim*, I. c. 71.

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only in their hopes but even in the symbols and ceremonies in which they gave expression to them. In the words of a writer of aphorisms, he would, if he could, "put a whole book into a page, a whole page into a phrase, and the phrase into a word."

This object of his which he avowed more than once in his introduction to his "Yad Hahazaqah," and in his epistles to Ibn Aknin and "On Future Life," could not of course be accomplished unless Judaism be stripped of all accretions, and reduced to its fundamental principles. Maimonides, therefore, disregarded whatever was not Biblical and Talmudic, and disparaged the "custom mania" which spread among Jews in Christian countries.<sup>11</sup> In his *magnum opus* he mostly mentions those Minhagim which were universal, seldom any which were local, and but once a custom in vogue among the Jews in France, while of the Gaonic practices all he had to say was that they were adaptations from the Sadducees.<sup>12</sup>

It is not difficult to detect the uneasiness and uncertainty with which that intellectual giant

<sup>11</sup> Mishnah, *Hanzikim*, s. v. "Veeleh": חולי המנהגים

<sup>12</sup> Y. H. *Issure Biah*, xi. 7; *Ib.* למדוה ; *Malveh Vloveh*, iv.; Mishna, *Qilaim*, v., etc.



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wrestled when he thus began to sift Judaism down to its essentials. With all his clear-sightedness and profundity he is frequently inconsistent. He tells us in one place that "many of the Biblical commandments were only temporary"; in another, that "all the words of the Torah are binding forever." In one instance he declares that "the Torah itself had regard for a popular usage, even if it antagonizes and is foreign to its spirit"; in another, that "Joshua himself could not render an illegal practice legal."<sup>13</sup> His best sympathies, however, were with the Shammaites, the upholders of the "national" or "fixed" element in Judaism. He devotes a great part of his work not only to the laws which have long outlived their utility—such as concerning sacrifices and the priesthood—but even to those which were to come into effect in the distant future, when the Messiah will come and the Jewish State be re-established. Like the Shammaites he too would have the Jews constitute a "peculiar people," and Judaism form a Church in which only the elect (*Hagunim*) shall have the say. Like them he also preferred practical to spiritual religion, forbade any deviation from the

<sup>13</sup> *Sepher Hammidoth*, iii., *Ysode Hattorah*, viii., ix., *More Nbhukh.*, III. c. 41.

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ritual unless it be by adding to it, and advised the enforcement upon children of the observance of all the laws, the dietary ones in particular. His views on marriage and divorce were also in consonance with theirs.<sup>14</sup>

So far as to custom. But when we come to creed Maimonides' hesitancy and indecision appear in still bolder relief. Unlike the codifiers that anteceded and followed him, he did not limit himself, in his "Yad Hahazaqah," to "practical" Judaism only. The first of the fourteen parts which it comprises is devoted almost exclusively to Jewish beliefs. And it was just here that he offended. Hitherto Judaism was practically a religion without a creed. We have seen above how little of doctrine there is either in the Bible or in the Talmud. The only definition, if it could be regarded as such, of religion we find is "the love to God" (*Deut.* x. 15; xi. 13, 22; xix. 6. Cf. *Micah* vi. 8, and *James* i. 27). Whatever the ancient Rabbis and modern scholars may say, there is no explicit statement therein of that important doctrine, the Immortality of the soul. As regards even

<sup>14</sup> *Issure Biah*, xi. 14-15; *Tphillin*, v. 4; *Talmud Torah*, iv. 1 (cf. *Brakh.*, 28a, and *Ab. d'R. N.*, ii.); *Tphillah*, iv. 25; *Maakhaloth Asuroth*, xvii. 28 (cf. *Bezah*, 15a, *Suk.*, 28b, *Yomah*, 77b).

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the belief in God it would appear from the language of the Decalogue that it is "There shall be no other gods before Me" rather than "I am the Lord thy God" (*Ex.* xx. 2, 3) that was uppermost in the mind of the legislator, and that, therefore, the Rabbinic statement is not unfounded which declares that "he who relinquishes idolatry embraces Judaism."<sup>15</sup> All that is necessary to be saved is, according to the Rabbis, *to be righteous*,<sup>16</sup> and Albo has already called attention<sup>17</sup> to the equanimity with which was received R. Hillel's declaration that "Israel hath already had its Messiah in the reign of Hezekiah" and must not expect another. But overlooking all this, Maimonides' zeal for unity prompted him to introduce uniformity even in the realm of creed.

There is hardly one of his thirteen articles of faith, now universally accepted and repeated every day, which could not be, or was not, contradicted by another authority also founded on the Bible and Talmud. That he himself wavered in his views is evident from the fact that afterward he reduced his Articles to two, and that still later when forced,

<sup>15</sup> *Mgil.*, 13, *Ndarim*, 25.

<sup>16</sup> *Sanhed.*, xi. 1.

<sup>17</sup> *Iqqarim*, 1. See Dembitz, *op. cit.*, p. 36; *J. Mgil.*, iii. (last section).

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according to some,<sup>18</sup> to turn Mohammedan, retained but one, *viz.*, the Oneness of God.<sup>19</sup> Maimonides, therefore, as Graetz remarks,<sup>20</sup> "on the one hand raised the Jewish creed to the height of rational knowledge, and on the other, set bounds to the free development of thought. Hitherto religious action only was valued as the characteristic of Jewish life. Maimuni now called a halt to free thought, marked the boundary line between belief and heresy, not in the firm province of religious practice, but in the shifting ground of religious belief, and brought the ethereal element of thought under rigid formulae. . . . Maimuni through his religious code gave Rabbinical Judaism a strong hold, and on the other hand, he helped to ossify it. Much in the Talmud that was still unsettled and open to explanation he crystallized into unchangeable law. As he introduced into Judaism articles of belief, which were to limit thought by thought, so by his codified determinations of the laws he robbed it of its mobility. Without considering the conditions of the times in which the Talmudic decisions had arisen, he laid them down

<sup>18</sup> See Yellin and Abraham, *Maimonides* (J. P. S.), pp. 35 and 220 (n. 9).

<sup>19</sup> Cf. *Ysode Hattorah*, i. 1; vii. 1.

<sup>20</sup> *Op. cit.*, III. 460, 470.

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as binding for all times and circumstances. If Maimuni's code had acquired absolute supremacy, as it at first seemed likely to do, and had dislodged the Talmud from the schools, from the hands of religious authorities, Talmudical Judaism would have succumbed to petrification, notwithstanding the right thought and scientific treatment which Maimuni bestowed upon it."

That in spite of such a masterpiece as the "Yad Hahazaqah," coming from a personality like Maimonides, Judaism still retained its vitality and virility, still remained to a certain extent "free," is best proof of its ability to withstand any attempt to stint and stifle it. To counteract the influence of the *Mishneh Torah*, the real name of the "Yad Hahazaqah," R. Solomon ben Aderet wrote his *Torath Habbayith*, the popularity of which is shown by its having been abridged to meet the requirements of the masses.<sup>21</sup> Asheri, too, wrote his code-commentary to the Talmud in which he refers to the French and German Minhagim ignored by Maimonides.<sup>22</sup> Yet the impress left by the "Mishneh Torah" could not

<sup>21</sup> *Torath Habbayith*, int. See *Hashiloah*, IV. 306; Weiss, *op. cit.*, IV. 34.

<sup>22</sup> E. g., R. Hash., iv. 14; *Qiddushin*, i. 41; *Shab.*, i. 10.

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easily be wiped away. Maimonides marks the culmination of Jewish culture during the Middle Ages, and also the beginning of the sterility and fixity of the Jewish religion. With him began the medieval period of Judaism. Liberalism was more and more encroached upon by legalism. Each community still watched its own Minhagim with the utmost jealousy, but it also endeavored to enforce them upon other communities whenever possible. Samuel's maxim about *lex loci* was either overlooked or ignored. Asheri himself tried to suppress the customs of the country to whose hospitality he was so much indebted, and introduce those of his native land in their stead. R. Isaac Alfasi, the "Spaniard," had little authority for him. "I am sure," said he, "the traditions *we* possess, and which have been transmitted to us by our ancestors, the sages of Germany, and our teachers of France, are more reliable than those of this country," and nothing but fear of dissention prevented him from abolishing them altogether.<sup>23</sup>

Judaism thus moved from its original mooring; it, too, with the rise of the papal power and clerical influence, began to employ the methods of the

<sup>23</sup> *Responsa*, x. 20, ii. 11, iv. 10, xxii. 15, etc.



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Church. The migrations which then disintegrated many a Jewish community in one country helped the up-piling of Minhagim in another. New ones were gradually absorbed, while the old ones were most scrupulously retained. For "sooner would they break the Decalogue than an even avowedly heathenish custom," complains R. Chagiz,<sup>24</sup> a complaint reiterated by R. Ezekiel Landau when he exclaimed, "Would that people were as careful about the Ten Commandments as they are about a Minhag."<sup>25</sup> As even Maimonides saw fit to apologize for Samson's and Solomon's marrying "strange women,"<sup>26</sup> even more so did they henceforth feel it incumbent upon them to find a *raison d'être* for the most trivial usage of their Rabbis. Then set in the day of little things. Ignatius Loyola yielded no more obedience to his "superiors" than the Jews to theirs. The chief concern of the devout was no longer the study of the Torah, but the accumulation of Minhagim. Admiring disciples carefully noted down the singular observances of their masters, as was done

<sup>24</sup> *Mishnath Hakhamim*, 205. See *Sepher Hasidim*, No. 1106.

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<sup>25</sup> *American Israelite*, Mch., 1, 1906 (by Dr. Deutsch).

<sup>26</sup> *Issure Bi'ah*, xiii. 14-15; cf. *Rosh, Responsa*, xx. 1, lxiv. 4, lxxvii. 4, cviii. 13.

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formerly with Talmudic Halakhoth. These were collected by later codifiers, published in their works and made compulsory on all Israel. Judaism was thus gradually but steadily transformed. A prey to what Origen would call "the foolishness of beggarly minds," it was almost deprived of its independence and cosmopolitanism, and became exclusive, ceremonial, "fixed." And well might Israel of that day say:

"The slaves of custom and established mode,  
With pack-horse constancy we keep the road;  
Crooked or straight through quags and through dells,  
True to the jinglings of our leader's bells."

## VII.

The relation between the Spanish and the Franco-German Jews towards the close of the fifteenth century, was not unlike that which obtained among the Palestinian and Babylonian Jews before and those of Germany and Poland after that period,—a relation which, according to the Talmud, originated already with Zebulun and Issachar in the dawn of Jewish history. The former were known for their wealth with its frequent companion—ignorance; the latter possessed learning with its not unusual partner—poverty. An exchange of commodities ensued. The pov-

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erty-stricken *Ashknazi* depended upon the wealthy *Sphardi* for his daily bread and occasional cheer, and repaid his obligation by meditating on the Law by day and night. Both, however, cherished an exquisite contempt for each other. The *Sphardi*, proud like the grandees among whom he mingled, looked down upon his cringing coreligionists hailing from the shores of the Rhine with a disregard amounting to disgust; the latter thought of the former, what R. Aqibah, what most educated men think of a wealth-inflated ignoramus. It does not appear as if it were by mere accident that Maimonides committed the sin of omission with regard to Ashknazic Minhagim. Surely he

“Who bore the ponderous Bible’s storied wisdom,  
The Mishnah’s tangled lore at tip of tongue,”

could not have been so entirely ignorant of the works of R. Isaac Halevi or R. Shlomoh Izhaqi. It seems to have been caused less by his unfamiliarity with, than by his disregard for, the custom of the French and German “Polacks”—a sentiment which led Graetz, several centuries later, to commit a like sin in the realm of history with respect to the genuine Polacks.

And herein perhaps lies the reason why the out-

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break of hostilities against Maimonides' works first took place in France and Germany. To denounce those Jews simply as bigots and fanatics would be to shut our eyes to the real state of affairs. They who have read with avidity, and even held as inspired, the grossest as well as the subtlest statements of the Talmud, who studied and enjoyed the pantheistic philosophy of Gebirol's *Mqor Hayim* ("Fons Vitae"), why should they condemn what was neither less innocent nor more offensive than Saadyah's *Emunoth Vdeoth* ("Beliefs and Opinions")? It must have been the slight they resented which brought on the *irae et lacrimae* that almost culminated in a schism. It was this, as R. Tam in fact plainly states, that prompted the Western Jews to retaliate whenever possible.<sup>1</sup>

This may also explain another phenomenon. Soon after the appearance of the "Mishneh Torah," R. Jacob ben Asher wrote his *Turim*, a work which, while containing many of the faults, shows but few of the excellencies of the former. What was it that tempted the great "Ba'al Hat-

<sup>1</sup> See *S. Hayyashar*, No. 620; *Kerem Hemed*, vii. 2; Zunz, *Zeitschr.*, p. 281; Guedemann, *Gesch. d. Erz. u. Cul.*, I. 12 (n. 1); Graetz (Heb. tr.), IV. 59, 60.

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turim " to undertake this arduous labor? No doubt he felt called upon to fill a gap made by the work of Maimonides, and to vindicate the Minhagim of France and Germany. In fact, he merely completed what his father began, and while giving proper recognition to the customs of Spharad he always puts in the foreground those of Ashknaz. Thus, while the "Tur" is inferior to the "Yad Hahazaqah," it yet surpasses it in its impartiality. Whenever there are conflicting opinions R. Jacob states them all, adds sometimes the decision of his father, but never presumes to say the final word. His weakness proved his strength.

But the entire gamut of Minhagim was not run even after the appearance of the "Turim." Rabbis became busier than ever writing works on customs, and to the making of many books there was no end. Minhagim were the order of the day. The usages of prominent pietists were scrupulously recorded and preserved for the edification of future generations, to whom they were to serve as patterns for their *modus vivendi*. And communities as well as individuals vied with one another in their over-pious zeal.

Not the least fertile source for the multiplicity of Minhagim was the Prayer-book.

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Strange as it may seem the Bible has little to say about the order of service. Prayer was never accorded the place in Jewish polity which we give it today. The Prophets do not enjoin it even according to the Rabbis,<sup>2</sup> and judging from the name *Abodah*, it was a later substitution in place of sacrifice. Gradually the mere confession of sins was supplemented with a profession of faith, and the synagogal services in the pre-Maccabean period, according to Mr. Montefiore,<sup>3</sup> "probably already included a practical confession of faith in God and His word—contained in the *Shmá* and in two appended passages,—a section from the Law continuous from week to week, so that the whole was read through in a cycle of three years; a reading from the prophets—not fixed but left to the choice of the individual and only customary on Sabbaths; together with a few short prayers." Of course some Rabbis claimed that the Patriarchs were already familiar with the *form* of prayer and even that Rizpah recited the burial service as we have it today.<sup>4</sup> But for a long time services centred round the reading of the Law. And even

<sup>2</sup> *J. Brakh.*, i. 5; see Taylor, *op. cit.*, i., n. 5, ii., note 41.

<sup>3</sup> *Op. cit.*, pp. 390-91.

<sup>4</sup> See Mid., *Thillim*, lv., Mid., *Shmuel*, xxviii.



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this comparatively ancient institution, mentioned already by the Apostles as antiquated (*Acts* xiii. 15, 27; xv. 21), was differently observed in different places. The Palestinians finished the Pentateuch in three years, the Babylonians in one year,<sup>5</sup> and from a valuable manuscript at the Bodleian we see that they disagreed also as regards the *Haphtarahs*. But with the advent of the Geonim and their ardor for uniformity in worship, all this was overlooked. R. Saadyah might still admonish "Let every one pray as and when he likes,"<sup>6</sup> yet he himself was the author of a prayer-book. And the Geonim Amram, Hananel, Nissim and Hai, did not lag behind and provided Spain, Germany, Egypt and Kairwan, respectively, with hard and fast formulas about public worship. The Rabbis of France and Germany, Rashi and the Tosaphists, for example, also tried their hands,<sup>7</sup> and it was only through the law of the survival of the fittest working in the domain of religion that

<sup>5</sup> *Mgil.*, 29b; *Yad Hahaz.*, "Hil. Tphillah," xiii. 1; Zunz, *Gottesd. Vort.* (ed. 2), pp. 34 n. "f," 424 n. "a"; and *Ritus*, II. 2-3.

<sup>6</sup> *Op. cit.*, xliii. Cf. Steinschneider, *Hebrew Literature* (Matter's tr.), p. 84; Geiger, *Der Hamburger Tempelstreit*, p. 21.

<sup>7</sup> See Falk, *Mareh Geber*, Amsterdam, 1865, pp. 1-3; Dembitz, *op. cit.*, pp. 41, 372 (n. 3), 380 (n. 16).

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our *Siddur* or *Tphillah* became the book of common prayer to the great majority of the Jewish people. These prayer-books, or those succeeding them, became the storm-centres of Minhagim. Each congregation regarded its own as holy and inspired, and branded any departure therefrom with heresy and infidelity. This gave rise to a sort of Massorah about the ritual, and R. Simhah Vitry's *Mahzor* and Abudraham of Sevilla's Commentary mark the fruition of this movement in Jewish Nomology.

In addition to this, the migration of Spanish Jews into various countries greatly put the unity of many a congregation to the test. Until then the Talmudic injunction to comply with the customs of each place<sup>8</sup> was still more or less strictly observed. The heterogeneity of Judaism was limited to sections and districts only. Every city or town formed a unit, a compact body, the Minhagim of which were binding upon native and stranger alike. Centuries later, R. Isaac Luria, himself an ardent Ashknazi, used the Sphardic ritual when in a Sphardic community.<sup>9</sup> But the

<sup>8</sup> *B. Mzia*, 83a, 86a.

<sup>9</sup> Azulai, *Joseph Omez*, x. 2; see Openheim, *Hanhogath Adam*, Warsaw, 1873, p. 13.

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Spaniards who after the Expulsion settled in the Barbary States, were so superior to their native brethren that compliance with their Minhagim was against their supercilious disposition. Nor was there any prospect of ever raising them to their own level of culture and refinement.<sup>10</sup> Hence Spanish congregations were formed alongside of the already existing congregations; different constitutions were framed, separate Rabbis were maintained, and customs introduced which were alien to their newly adopted home. This was soon the case in every large city. Wherever the unfortunate refugees found shelter there jostled side by side Sphardic, Italian and Ashknazic congregations, which were again split into smaller groups independent of one another, each refusing to be merged, each persisting in its own Minhagim.

Thus, if the thirteenth century produced a "Mahzor Vitry" on the Minhagim of France, and the following century a special work by Abudraham on those of Spain, we find before the end of the Middle Ages, besides Yarhi's "Book of Conduct" (*Sepher Hammanhig*, first ed., Constantinople, 1519; second ed., Goldberg, Berlin, 1855), and Bachya's *Shulhan Arbah* (also attrib-

<sup>10</sup> Ribash, *Responsa*, xxi., xxxviii., xcv., clviii., etc.

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uted in *Zemah David* to Nachmanides) and Mak-hir's *Seder Hayyom* (Venice, 1599), which like many others are of a general character,—a whole literature of the Minhagim of almost every city wherein Jews lived. Meir Halevi, Abraham Klausner, and Solomon of Neustadt made a specialty of the Austrian customs, Jacob Moelin ("Mahril") wrote and became authority on those of Germany, and Isaac Tyrnau of Hungary, Moravia and Bohemia. Roumania, too, contributed a "Mahzor" (Constantinople, 1573), while R. Mnahem of Merseburg bequeathed to posterity the usages peculiar to Saxony. Italian Jews were perhaps the least divided among themselves until the immigrants made their country a dumping ground for conflicting Minhagim, especially after the arrival of the Sphardic Jews; for not only did the latter keep aloof from the rest, but were themselves divided into two, Spanish and Portuguese, and these again into Castilian and Catalanian, which further ramified into smaller and more restricted groups, like the Cordovan, Toledan, Barcelonian, Lisbonian, etc., each of which maintained its individuality long after its expulsion from the place whose name it bore.<sup>11</sup>

<sup>11</sup> See Bernfield in *Ahiasaf*, VII. 34; Graetz, *op. cit.*, IV. 402; Weiss, *op. cit.*, V. 184-8, 288.

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And who can enumerate the Minhagim of individual Rabbis retained in Responsa and biographies, and set forth for all Israel's emulation! A Minhag-mania seized every pious soul. "As the Christian schoolmen argued about subtleties of belief, so the Jewish Rabbis argued about subtleties of practice."<sup>12</sup> Minhagim now came to be known as "ritual commandments,"<sup>13</sup> and as they were believed to have had their source in the "elder scripture," if not in the Torah, it was finally even regarded unnecessary to cite authorities for their observance. Then was inaugurated the period which Professor Schechter calls "Geographical Judaism," when Spanish, Italian, French, German, Russian and African communities, "though interpreting the same Torah, occupied with the study of the same Talmud, and even conforming more or less to the same mode of life" preserved the individuality in which was mirrored the habits of the country which it represented, and to explain some striking resemblances between Jewish and Gentile rites it was claimed that "*they*

<sup>12</sup> Montefiore, *op. cit.*, p. 543.

<sup>13</sup> מצוות העבודיות See Rabinowitz, *Zunz*, p. 181 (n. 1); Weiss, *op. cit.*, V. 173 (n. 5), 178, 180.

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borrowed them from us, not, God forbid, we from them.”<sup>14</sup>

With what anxiety would not the Geonim and Maimonides have regarded such a situation which they themselves were instrumental in bringing about. What would have been the feelings of Abraham Maimuni at the sight of the Jewish community of Constantinople, for instance, with its forty-four synagogues, representing as many congregations with distinct Minhagim, if the two divisions among the Jews in Cairo gave him such uneasiness as to pen the following epistle:

“ Know ye that in the practices of the Jews both in prayer and the reading of the Law many errors are to be found and from various causes. Some are due to the errors of the heads of the congregations or the mistakes of the precentors (*Hazzanim*), who as a rule know little or nothing. Hence right and wrong, necessary and unnecessary, good and bad customs became all confused and mingled together. The learned, the *Dayyanim*, and all those who were against, were silenced, partly because they had no power to give effect to their opposition, partly also because what

<sup>14</sup> *Mishnath Hakhamim*, p. 35 (quoted by Zweifel, *Sanegor*, Warsaw, 1894, p. 67).



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appeared convincing to one was not so to the other. Many customs also are not the same in every town, in fact in every congregation. I have seen with mine own eyes in the place where I live (Cairo) two congregations, one known as the Babylonian, the practices of which coincide both as to prayer and the reading of the law with those common to all Israel; and the other Palestinian, where they read only part of the weekly portion, recite the *Qdushah* (adoration) sitting, and vary in many more respects. My father and other sages endeavored to do away with these differences, but they were unsuccessful, *owing to the opposition of wicked men.*"<sup>15</sup>

Such was the state of Judaism about the end of the Middle Ages. On the one hand we hear frequent complaints about the strangers who presumed to foist their Minhagim on the communities in which they had settled.<sup>16</sup> On the other hand many felt at a loss as to which customs to follow, especially when it involved as radical a change as that between the Sphardic and Ashknazic rites.<sup>17</sup> It seemed as if the Jews, too, were

<sup>15</sup> *Hammanhig*, p. 11 (abridged).

<sup>16</sup> Mahriq, *Responsa* (Venice, 1590), 170.

<sup>17</sup> Rashdam, *Responsa* (Salonica, 1580-2), II. 26.

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asking what they must do to be saved. And again, as heretofore, unity was to be preserved at the cost of uniformity, and harmony restored by allowing each *congregation* to follow its own bent. The new principle was that while the usages common to a community as a whole are binding on every constituent member, no one of its congregations can compel another to adopt its particular Minhagim.<sup>18</sup> This principle was carried still further until a prominent Rabbi declared<sup>19</sup> that "it is meritorious to pray in privacy rather than among those with whom one has little in common. He prays best who prays where he finds it most congenial. This," he continues, "gave rise to the custom of our people of banding themselves together into distinct congregations, wherever there was a sufficient number who use the same language and hail from the same locality." It was an agreement to disagree.

## VIII.

At the same time that Christianity was undergoing the throes of the Reformation, Judaism passed through perhaps the most chaotic period in

<sup>18</sup> See *Matte Joseph*, II. 26.

<sup>19</sup> Radbaz, *Responsa*, III. 472; *Hatham Sopher*, X.; Coronel, *Zekher Nathan* (Vienna, 1872), pp. 81, 138.

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its existence. "The disgraceful treatment of the fourteenth and fifteenth centuries completed what the Crusades had begun and split the Jewish communities into national groups. There were in many towns not only Italian, Greek, Spanish, Portuguese, German and Moorish congregations side by side, but there were innumerable sections within each of these groups. Each of these congregations had its own managers, its own ritual, its own Rabbis, its own Charities, its own jealousies, its own prejudices. They were not only independent of each other, they were often antagonistic; they rarely worked together for common aims."<sup>1</sup> This, however, was only superficially so. The standards they bore were still the same. The strength of Judaism lay in these very sects, if so we might call them, by which the spirit of liberty was maintained. At bottom there were still but two "struggle groups" which agitated the House of Israel. Divided as they seemed by outward forms, the inward spirit still united them. Spharadic and Ashknazic Judaism was really split mainly along the lines of the "fixed" and the "free"

<sup>1</sup> Abraham, *Jewish Life in the Middle Ages* (J. P. S.), pp. 161-2; Graetz, *op. cit.*, IV. 477-9; Bruno, *Responsa*, 268; *Hashiloah*, VIII. 435 (n. 1).

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religions, which formerly gave rise to priestly and prophetic, Yrushalmic and Yammian, Palestinian and Babylonian Judaism. This is shown in their relation to *Qabbalah*, or mysticism. The Sphardim, bent on practical Judaism, invested their Minhagim with the mysteries of this esoteric philosophy. They would not waste time on the Talmud while they could indulge in "the more engaging pursuit of secular knowledge (*Qabbalah*)."<sup>2</sup> The Ashknazim would recognize none of their recondite symbolism, and had little use for the *Zohar* and kindred works. "Were Simon ben Yohai himself (the alleged author of the "*Zohar*") to bid us alter any of our accepted usages we would not harken unto him, for in the majority of cases he is in the wrong." *Qabbalah*, they claimed, has no right to interfere with the study of the Talmud, for whatever is not explicitly stated in the Talmud and *Posqim* cannot be made binding by *Qabbalah*.<sup>3</sup>

At this time there appeared a book which, like its predecessors, threatened for a while to upset the balance of the two sets of forces, but had no

<sup>2</sup> See Weiss, *op. cit.*, V. 30.

<sup>3</sup> Mahrshal, *Responsa*, 98; Tos. Yom Tob, *Brakh.*, i. 12; *Magen Abr.*, xxv. 20.

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other effect than that of being the cause of another work championing the rights of the opposite party. In their unsettled state the Jews were apparently hankering for some one to put a check to the uncertainty and multiplicity of Minhagim. They were longing for a leader to cement Israel once again. R. Solomon of St. Goar, the "Jewish Boswell," as Professor Schechter calls him, with his detailed account of the customs of "Mahril" is a personification of the *Volksseele* of that time.

As happened before, the attempt was made by a Sphardi, R. Joseph Karo, a stronger believer in the fixity and the immobility of Judaism than most of his predecessors. Dissatisfied with even the little freedom granted by R. Jacob, he wrote a commentary to the "Turim" in which he "collected and clearly explained all the decisions of the 'Posqim'" and which he intended to abridge, "that the Law of the Lord be accessible to all Israel, that even children might learn it by rote and be conversant with its customs."<sup>4</sup> And the older he grew the more determined he became to unite his brethren in their practices, and avert an impending disruption. But this well-meant but ill-considered ambition, was fanned and fuelled by

<sup>4</sup> *Beth Joseph*, Intr.

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an innate desire to promote the supremacy of the Sphardic Minhagim. Hence he set to work to re-try the evidently simple and self-contained remedy of producing a code in which everybody could find what he wanted, "prepared, preserved, clear and concise."<sup>5</sup>

Compared with the terse, systematic and scientific treatise of Maimonides, the garbled, methodless and predominatingly mystic code of Karo cuts but little figure. The former is a masterpiece of style and composition, a veritable cyclopedia of Judaism, containing not only what Jews believed at the time it was written, but even what they practised in the past. Maimonides' only fault was that he assumed to dictate what they should believe in the future too. His work was a "beautiful sacrifice to a noble mistake." Karo's *Shulhan 'Arukh*, notwithstanding the model the author had before him, is a medley of dry-as-dust and disconnected laws, without any of the graces which adorn the "Yad Hahazaqah"—a picture of the Diaspora of his day. Of the creedal, which constitutes the spiritual, side of Judaism, he says almost nothing. To him every Minhag was as important as the Thirteen Articles of Faith. Yet,

<sup>5</sup> *Turim*, Intr. See *Shem Haggdolim*, s. v. "Beth Joseph."



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as was said, the times seemed to favor such a work, and it became at once not only the most prominent but also the most widely spread and read book after the Bible. "Israel needed it." It enabled those who could not indulge in the exhaustive study of the Talmud, as well as those who "would not waste their time on it," to dispense with it altogether. It served a double purpose: a guide to the former, a substitute for the latter. And divided as it originally was into thirty parts,<sup>6</sup> it became, to the pious, as familiar as the Psalms, both being read and completed every month of the year.

The "Shulhan 'Arukh," therefore, appeared to be an unqualified success. Not only in those countries where ignorance and stagnation supervened the thorough knowledge of the Talmud, but even where Judaism was still instinct with life, or, as in Poland, full of the buoyancy of youth, it became the highest authority. Rabbis were recommended to use it, because with it "no one needs refer to any other book in the world." A prominent scholar declared that "were even Joshua the Son of Nun to have said so, we would not accept it. . . . For everything in the 'Shulhan

<sup>6</sup> See "Rab Zair" in *Hashiloah*, IV. 307-8.

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'Arukh' is as immutable even as the law of Moses."<sup>7</sup> And yet we shall be mistaken if we suppose its sailing to have been calm and smooth. A mighty storm arose against it. Its authoritativeness was questioned by some of the most eminent Rabbis,<sup>8</sup> and though it met the demands of many it was far from being satisfactory to all.

It was not, however, so much its authoritative-ness as its exclusiveness that brought about the opposition. The Jews of the sixteenth and seventeenth centuries were no longer the self-assertive, independent people they used to be. Philosophy died out among them despite the assertion of Medieval Rabbis that the Gentiles borrowed it from the Jews, and the "Emunoth Vdeoth" fared no better than the "Moreh Nbukhim."<sup>9</sup> Their only delight was the practice of their laws, and the more the better. It was the avowed preference in the "Shulhan 'Arukh" for the *Minhag Spharad* that aroused their ill-favor. Karo's code as supreme authority meant the subjugation, perhaps the obliteration, of the *Minhag Ashknaz*.<sup>10</sup>

<sup>7</sup> *Pne Joshua*, I. 10, II. 51, 52.

<sup>8</sup> Dembitzer, *Klilath Yofhi*, II. 13-14.

<sup>9</sup> Graetz, *op. cit.*, III. 625 f.

<sup>10</sup> Cf. *Hashiloah*, VIII. 40.

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And this encroachment on the rights of others they were determined to resist with all their might.

For the Sphardim and Ashknazim gradually grew to be perhaps more at variance with each other than with the Christians in whose countries they dwelt. A cursory view of the main differences between these two great divisions is sufficiently illuminative of the manner in which extraneous influences affect the spirit of Judaism. The Sphardim, originally in all respects like their Gentile neighbors, free and independent, seldom refrained from practising their customs in the presence of non-Jews. It was assimilation not separation that they had to guard against. The gulf, however, between Jew and Gentile in Gaul could not easily be bridged. Assimilation was out of the question. Not fellowship but force was there employed to precipitate them into the bosom of the Church. And in agreement with these conditions were also their practices. The Sphardim paid but little attention to Minhagim which obtained exclusively among Jews, the Ashknazim observed them with the greatest rigor.<sup>11</sup> On the other hand, in all customs which implied contact between Jew and Gentile, the former, almost in-

<sup>11</sup> See Tur, *Orah Hayim*, "Hil. Rosh Hash." § 585.

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variably, were strict, the latter—lenient. To use non-Jews' wine, or deal with Gentiles before their holidays—expressly prohibited in the Talmud—the Ashknazim seldom hesitated, while the Spharim put upon such observances all the drift and weight of a Rabbinical decision.<sup>12</sup> A book, therefore, aiming to perpetuate the Minhag Spharad could have met with only the qualified approval of the Ashknazim. Indeed R. Karo's "Shulhan 'Arukh" in its original form would never have become so popular among all Jews except for a commentary, or critique, written by a young Rabbi, Moses Isserles of Cracow.

When French and German Judaism, like Palestinian, Babylonian and Spanish before, began to show symptoms of stagnation, or the debility of old age, when in those countries too the study of the Talmud began to be neglected, and religion

<sup>12</sup> Tosaph, *Ab. Zarah*, 1a, s. v. "Asur"; 57b, s. v. "L'Aphuqe" (cf. Rashi). Chayoth, *Darkhe Hammishne*, II. c. 2. R. "Tam" permits wine of a non-Jew (*S. Hayyashar*, 618, 621), and Rashbam says (*A. Z.*, 57b; *Yoreh Deah*, 123): אין גוים בקיאים בטיב יין נסך. Ribash, however, maintains (*Tmim Deim*, 85): אין להתירו כלל אם איש חיל אמר לאיש ישראל לשתות עמו יין חייב לפזר כל ממונו. אם יוכל להציל עצמו בזה.

Cf. *Ture Zahab*, Y. D., 124, n. 34; *Havoth Yair*, 183, and Isserles, *Responsa*, 124. See Smolensky, 'Am 'Olam, "Hashahar," III. 77.

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confined itself to a mass of meaningless Minhagim, the Torah there, to use a Talmudic phrase, commenced to look for a new hostelry. Nor did it have to search long or far. "Enlargement and deliverance" soon arose from another place. Poland opened her portals to the persecuted race, and there, Phoenix-like, Judaism received new life after almost being reduced to a heap of ashes.

To this land came R. Jacob Polack, as did formerly R. Johanan ben Zakkai to Yamnia, Samuel to Nahardea, Hanokh to Spain and Makhir to France, carrying with him Talmudic tracts in his bag and much learning in his head. His new ideals and methods, though ridiculed everywhere else, received a hearty welcome there. Pilpul, or Talmudic casuistry, which in fact was an expression of protestation against unbridled authority, were just what Polish Jews, then unhampered and unencumbered, were longing for. And soon Polish Judaism severed its allegiance to German Judaism, and became not only independent of it but even subjugated its former master. The first and foremost disciple of R. Jacob, the great though little known R. Shakhnah, was so averse to any possible additional burden that, despite the repeated entreaties of his pupils and friends, he

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firmly refused to write down his decisions "lest they be regarded as final, since the latest are always looked upon as authoritative. I must not have them rely on me. . . . Let them rather comply, as they know best, with the exigencies of their time and place."<sup>13</sup>

The way having thus been prepared, it was in that country that the hue and cry was first raised against R. Karo's code, and by a disciple of R. Shakhna. Impatient of restraint, burning with zeal to defend the customs which he feared were bound to disappear, and fully qualified for his undertaking, R. Moses Isserles wrote a commentary, or rather annotations on the "Shulhan 'Arukh." "This," cries he, not without a tinge of sarcasm, "is not yet '*the* table spread before the Lord.'" He protests against R. Joseph's assumption in general, but more especially against his slavishness to the codes of Alfasi, Maimonides and Asheri, and disregard for the noted Talmudists of France and Germany. His principal aim was to call the attention of students to these facts.<sup>14</sup>

<sup>13</sup> *Responsa*, 25. The author is largely indebted for the above and the following on "Shulhan 'Arukh" to A. Levy and especially "Rab Zair," in *Hashiloah*, IV. and VIII.

<sup>14</sup> Introd. to his commentary.



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And in this so-called commentary, in which the text is utilized merely as a pretext, the greatest stress is laid on the "Minhag Ashknaz." It mattered not to R. Isserles whether it originated with the people, or, having been introduced by some eminent Rabbi, received the approbation and sanction of the people.<sup>15</sup> New conditions breed new demands, and hence R. Karo's decisions are not to be relied on when they conflict with those of a more modern authority.<sup>16</sup> The distinctions drawn above between the Sphardic and Ashknazic Minhagim are best brought out in the text of Karo with Isserles' annotations. To take at random one or two of the many instances, working on Christian holidays for a Gentile is proscribed by the former, but permissible according to the latter, and similarly also about walking barefooted on the Ninth of Ab in a non-Jewish neighborhood. When, however, the custom is one exclusively among Jews, as, for example, building the pulpit in the rear instead of the centre of the synagog, the case is different. The latter strictly prohibits

<sup>15</sup> See *Darkhe Moshe*, x. 23, 93; *Orah Hayyim*, 54; *Yore Deah*, 89.

<sup>16</sup> *Ibid.*, x. 35; *O. H.*, 18; *Y. D.*, 35-36.

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it, the former even recommends it "for the sake of convenience and comeliness."<sup>17</sup>

Nor was this all. In his anxiety to uphold the "Minhag Ashknaz," R. Isserles omitted nothing that would weaken the position of the "Minhag Spharad." Though more practical than theoretical, he too sought reasons for certain customs, but unlike R. Karo, he was no mystic. He admired Qabbalah, and even wrote a work to explain some of its postulates, yet he never lost cognizance of its being inapplicable to daily life. "Where a law is concerned, educe no evidence from the 'Zohar'; nothing is then more out of place than Qabbalah, for it is neither sacred nor infallible."<sup>18</sup>

Thus was frustrated the seemingly final attempt at uniformity and fixity in Judaism. The Jew who read the "Shulhan 'Arukh" was reminded on almost every page that there are Minhagim other than his equally Jewish, which even if he does not respect he is bound to tolerate. R. Isserles' annotations, though similar in some respects to those of R. Abraham ben Daud's to the "Yad

<sup>17</sup> *O. H.*, 512, 554; see also *Y. D.*, 112 (Gentile bread), 150; and *Keseeph Mishneh*, "Hil. Tphillah," xl. 4. Cf. *Yad Hahaz.*, *ibid.*, xix. 3, and *O. H.*, 156, 334; *Y. D.*, 246, 265.

<sup>18</sup> *Darkhe Moshe O. H.*, 6, 14, 98, 168, etc. (cf. 65 and *Rma, Responsa*, 6, 7), *ibid.*, 27, 59, 65, 141, 284 and *Y. D.*, 246, 265.

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Hahazaqah," differ yet both as to their author's aim and the means he employed in pursuing it. The *Hassagoth* were conceived in a spirit of carping criticism, the *Haggahoth* in a desire to make the text adequate to all. And hence the results, too, were dissimilar. "Rabad" helped much to hinder the rapid spread of Maimonides' work; "Rma" contributed not a little to R. Karo's popularity. Were it not for the annotations to the "Shulhan 'Arukh," containing the various Ashknazic customs which R. Isserles as dean of the Cracow Talmud College was more than any one else in a position to know, it would never have become the law-book of all Jews, Sphardim and Ashknazim alike. "A German cloth," as Weiss remarks (punning on the words *Mappah* and *Shulhan*), "had to be spread over the Spanish table to make its bountiful fare relished by all Israel."

So much has been written concerning the "Shulhan 'Arukh," it has been the target of so many unfriendly critics among Gentiles and so few were its defenders among the enlightened Jews, that many think a closer acquaintance with—not to say a serious study of—this efflorescence of Judaism undesirable and unprofitable. And yet it is as

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faithful an embodiment of the Jewish religion as the Talmud and even the Bible, and our knowledge of Judaism, its aspirations, its conflicting and excluding tendencies, can never be complete, without a full appreciation of the aim and ideals which prompted, conceived and carried out the text and commentary of the "Shulhan 'Arukh."

It would appear now to most of us that matters have at last come to a focus, that "free" and expansive Judaism has finally yielded the palm to the "fixed" and practical. Indeed, we hear so much of "Shulhan 'Arukh" Judaism that we are led to believe that with it the tie was knotted in the cord of tradition, and the Oral Law was come to a close. Yet nothing will lead us wider of the mark than this supposition. If Judaism surrendered to the Karo-Isserles code it was not unconditionally or without a struggle. It soon, in fact, ceased to give satisfaction to many on either side. Those who believed in centralization of authority objected to it because it enabled any ordinary man (*Baál habbayith*) to become less dependent on the Rabbis, while the liberals protested against many of the decisions of this "very dry, very dull, very dense" code.<sup>19</sup>

<sup>19</sup> Mintz, *Responsa*, 15; Jaffe, *Or Israel* (Frankfurt o. O., 1702), Int. See "Rashba" on *Sota*, 22a.

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Besides, there was still the spectre which threatened the autonomy of many of the smaller congregations. If R. Isserles thought to pacify the devotees of Minhag Ashknaz by means of his "Haggahoth," he must have been greatly disappointed. Already towards the end of the fourteenth century the genuine Minhag Ashknaz began to lose much of its prestige among its whilom adherents. Its staunchest supporters, the Jews of France, regarded as presumptuous and condemned the action of the German Rabbi, Mèir Halevi, for treating their country as though it were an Ashknazic province.<sup>20</sup> But the Polish Jews went further still. Not only did they radically modify it, but owing to their preponderance in number and the weight their Talmudic learning brought to bear upon their observances, its original name was frequently ignored and it gradually came to be called *Minhag Polin*. R. Leon Modena in his book on Jewish customs written at the request of his Christian friends, translated into French (Paris, 1637; Venice, 1638), and made much use of by the younger Buxdorf in his revised edition of his father's Latin work, *The Jewish Synagog* (1641), mentions three kinds of Minhagim:

<sup>20</sup> Graetz, *op. cit.*, IV. 153.

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Sphardic (Levantine), Polish (Allemand [*sic!*]) and Italian.<sup>21</sup> The German Jews were therefore greatly aggrieved. They claimed that the Rabbi of Cracow as an Ashknazi was sailing under false colors, suspected him of what he himself suspected R. Karo, of presuming to encroach upon congregational rights and communal autonomy, and a spirited polemic ensued.<sup>22</sup>

In spite, however, of inner and outer opposition the "Shulhan 'Arukh" came to stay, but as was the case with its predecessors, both the text and the annotations thereto became nuclei for commentaries and separate works representing other views and different ideals. Judaism still lived and moved, but its pulsatory current was steadily decreasing. Even the upholders of the "free" religion could no longer recognize it under the avalanche of Minhagim accumulated in the course of many centuries. The number of laws in the "Shulhan 'Arukh" alone amount to no less than 13,602. But as no single volume could any longer contain all

<sup>21</sup> See *Ceremonies et Coûtumes* par la Sieur de Simonville, Paris, 1681, pp. 3-4.

<sup>22</sup> See Hayyim b. Bzalel, *Vikuah Mayyim Hayyim*, Int., and c. ii.: שיש לפסוק בכל מקום כפוסקים אחרונים. against Isserles, *Darkhe Mosheh*, *Mosheh*, Y. D., 35: שיש לפסוק בכל מקום כפוסקים אחרונים. *Y. D.*, 35:



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the ceremonial observances of the Jews, whole books were devoted to the Minhagim of the Sabbath and each of the festivals, not excluding the New Moon Day, on Hallah, Hazzan, and so forth.<sup>23</sup> The mystics too produced a "Shulhan 'Arukh" of their own in consonance with the teachings of Isaac Luria, Isaiah Horowitz, Hayyim Vital and others, which they studied and finished every month, and the "Latter Day Saints" again added still another to the numberless codes.<sup>24</sup> It was not long before Karo-Isserles' "Shulhan 'Arukh" underwent a radical change, though it was declared to have only been *abridged*; while at the beginning of the last century R. Danzig, a Vilna Dayyan, presented the Jewish world with his *Life of Man*, which surpassed in popularity the "Shulhan 'Arukh" itself. Of course, all this was done in a spirit of correction rather than of iconoclasm. The impulse was still from the centre, the *sanction* was still the voice of the people; but it was so muffled by the multitude of Minhagim that it was forgotten or ignored. Forgotten or ignored also was the fact that the Minhagim were only excrescences and

<sup>23</sup> E. g., *Hemdath Yamim* (4 vols., 1762-4), *Shne Luhoth Habbrith* (1653), *Moreh Zedeq*.

<sup>24</sup> *Shulhan 'Arukh* (Frankfort, 1701).

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not the soul and substance of Judaism, and that the power which made them yesterday may modify or unmake them today. So that when Rabbis and laymen imbued with the spirit of the nineteenth century undertook to do what the prophets, the scribes, the Talmudists, the Geonim and others did before them, their rights were questioned, their motives suspected, and upon their shoulders was put the burden of evidence that theirs was the true, the historical Judaism. “*O doxa, doxa ! quam es communis noxa.*”



## PART FIVE

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### MINHAG AMERICA: RECAPITULATION AND CONCLUSION.

"We consider bibles and religions divine—I do not say they are not divine;

I say they have all grown out of you, and may grow out of you still;

It is not they who give the life—it is you who give the life;

Leaves are not more shed from the trees, or trees from the earth, than they are shed out of you."

—WHITMAN.

"Forms, ceremonies and even beliefs are cast aside only when they become hindrances—only when some finer and better plan has been formed; and they bequeath to us all the good that was in them. . . . Dead and buried creeds have not carried down with them the essential morality they contained, which still exists, uncontaminated by the sloughs of superstition. And all that there is of justice, kindness and beauty embodied in our cumbrous forms will live perennially, when the forms themselves will be repudiated and forgotten."

—SPENCER.

## IX.

It should appear from what precedes that there have always existed in Judaism two sets of forces, one conservative and the other liberal, or two "struggle groups" vying for the supremacy of

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the "free" and the "fixed" elements in religion; that even as Moses established courts of justice at the suggestion of Jethro (*Ex.* xviii. 19), so did the Jews at all times intentionally or unintentionally imbibe many customs from their non-Jewish neighbors, and converted them by metabolism, as it were, into the flesh and blood of Judaism; that it was the *sanction of the people* that determined things Jewish, and that all these concurrent causes produced the "binding unity amidst boundless diversity" so characteristic of the "peculiar people."

These principles proved to be the *semper eadem*, the constant stamp, of nineteenth century, or so-called Reform, Judaism also. The fusillade of some Rabbis and laymen on the bulwarks of the ancient regime, the time-honored yet time-worn institutions of bygone years, was merely another phase of the "free" religion in its combat against the "fixed." "Dejudaisation" we cannot call it. M. Leroy-Beaulieu is right when he declares that "as Judaism possesses neither Church, Pope, nor Council to decide on what must be preserved intact and what may be modified, Jewish communities do, in fact, enjoy great freedom. The observances, scrupulously practised by the Jews of Vilna

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or Berditchef, may be neglected by the Israelites of Paris or London." But his statement is historically untrue when he says that "in proportion as the Jew becomes more of a Frenchman, an Italian, a German, Judaism and its adherents become less Jewish, less Semite."<sup>1</sup> With a better insight into the genius of Judaism he too would subscribe to the Talmudic statement: "The Prophets arose and established them (the Jewish observances); yet it was not the Prophets, but the spirit and practices of their ancestors."

German reform was but another link in the long chain of reformative efforts in Judaism. If at first it did not thrive in its native soil, it must be ascribed to the lack, on the part of its leaders, of an appreciation of conditions precedent. Like their patron saint Maimonides, they overlooked the all-important element in Judaism, the peoples' sanction. They were violent physicians whom, in the words of Erasmus, God has sent on account of the magnitude of the existing disorders. Geiger and his followers endeavored to force the *Zeitgeist* into the sacred precincts of the Synagog by converting it into a Church with a few infallible

<sup>1</sup> *Israel Among the Nations* (Eng. tr., N. Y., 1900), pp. 30, 58, 68, 135.



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"Theologen" at its head,<sup>2</sup> as the Shammaites had done thousands of years before. It was this that aroused the indignation of Luzzatto on the "Judenthum" of which he has so much to say in his interesting "Letters." It was this perhaps, and not a mere academic interest, that prompted Krochmal to point out the evolution of Judaism through the Oral Law, in his profound "Guide to the Perplexed of our Times."<sup>3</sup> It was this, certainly, that embittered Samson Hirsch and estranged Frankel and Sachs. Not "Reform" but "Orthodoxy" originally espoused the cause of the "free" element in Judaism. Strange and almost ludicrous as the objection of some of the "orthodox" to the amalgamation of the Ashknazic with the Sphardic ritual may seem—that there are special gates in heaven for the prayers according to special rituals<sup>4</sup>—it nevertheless sounds the same note of tolerance for every one's faith even as the sublime question of Malachi: "Have we not all

<sup>2</sup> Bernfeld, *Toldoth Hareformazion*, Cracow, 1900, pp. 122, 140, 183.

<sup>3</sup> *More Nbukhe Hazzman*, Warsaw, 1894, pp. 40 and 373 (n. 11); Bernfeld, *Daáth Elohim*, Warsaw, 1899, p. 590. See Zunz, *Nachg. Schrift.*, V. 184; Rabbinowitz, *op. cit.*, p. 174.

<sup>4</sup> *Eleh Dibre Habbrith*, pp. 3, 66. An objection, by the way, but lately reiterated by R. Joseph Cingoli of Vercelli, Italy (*Israelite*, xlviii. 47).

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one Father?" or the famous statement of the Rabbis that "the pious of all nations have a portion in the World-to-Come."

In Europe, however, Judaism in all its phases was in its decadence. Orthodoxy and Reform degenerated and suffered from senility. It was noted by Luther that he "could never see good order in the church last more than fifteen years together in the purity of it." This was also the experience of the Reform banner-bearers in Israel. Judaism felt the imperative necessity of leaving its two-thousand-year-old home and looking for a new place.

The place whence "deliverance and enlargement arose" this time was America. Here, as formerly in Alexandria, Yamnia, Babylonia, Spain, Germany and Poland the forces could rally again. Here alone, unencumbered and unimpeded, Israel's heritage could expand and contract to meet "new demands and new duties." But though seasoned and flavored with Americanism, Judaism, that "minimum of religion," as Renan called it, remains in essence and aspiration the same. No peremptory innovation, naught the necessity and efficacy of which is not indisputable, was ever tolerated even by the radical Amer-

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ican Rabbis. None of them dared rob the people of the initiative or wished that proposed reforms were to be permanently adequate to the prospective needs of American Israel. *De majoribus, omnes*. Nothing was abrogated or ignored, nothing introduced or accepted without the sanction which underlies everything Jewish—the *sanction of the people*. Hence, unlike the German reformers, Dr. Wise, for example, never regarded American as the only Judaism, pure and simple. It is only local, a *Minhag America*, as the Jews of Spain had a *Minhag Spharad*, of Germany a *Minhag Ashknaz*, etc. “All laws,” he said,<sup>5</sup> “not contained in the Decalogue, expressed or implied, are local and temporal (although the principle expressed by some may be eternal), and could have been intended for certain times and localities only.” This justification and *raison d’être* of so many diverse *Minhagim* in Jewry is also the justification and *raison d’être* of *Minhag America*.

Which then of the modern phases of Judaism is “historical,” in the real sense of the word? The candid reply must be *all or none*. If the preceding chapters have not established the validity of the predicate that, to use a political figure of

<sup>5</sup> Myers, *The Jews*, N. Y., 1897, p. 15.

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speech, the platform of Judaism is made up of, in fact never existed without, the planks of orthodoxy and reform, heterodoxy and radicalism, in other words, the "free" and the "fixed" elements; if the data there carefully, though perhaps imperfectly, adduced are not sufficiently numerous to substantiate and establish the truth that the sanction of the people of Israel can "Judaize" any practice, it must be ascribed not to the paucity of facts, but rather to the difficulty of mastering the almost embarrassing quantity of them or to the author's inability to adequately apply and utilize the material available.

American Reform Judaism, and, to make the point as strong as possible, we will take the extreme wing of it, has tried to introduce at least three drastic changes which might be classified under the headings: the relation between Jew and Gentile; the relation between Jew and Jew; and the relation between the Jew and his God, or those "beliefs and opinions" which modern research has helped to invalidate. The first two bear upon them the stamp of their environment, the third might be autochthonous, resulting from our civilization. Yet for every one of them there is parallel and precedent in Jewish polity. Should a

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modern Rabbi maintain that not all contained in the Bible or Talmud is binding, or suggest the expurgation of certain portions thereof, he could point to the Sophrim who have suppressed certain Biblical books, or to the Tannaim who have eliminated such as were already in existence.<sup>6</sup> Attention was called to the similar way in which the Talmudists dealt with the Mishnayyoth. Of the Gmara we are now in possession of only thirty-seven tracts which deal almost exclusively with "practical" Judaism. National Judaism in the hope of the Restoration retained the division concerning sacrifices, and to justify the commission maintained that the mere study thereof is as acceptable to the deed.<sup>7</sup> But Alfasi, Asheri and Karo omitted it from their codes. And does not the institution of sacrifice, which even according to the Rabbis was only tolerated by God to keep Jews from demon-worship,<sup>8</sup> show with what momentous consequences for Judaism the people's sanction was fraught even then? Is Judaism in Christian lands more "dejudaized" by removing the hat

<sup>6</sup> *Shab.*, 13b; *Hag.*, 13b; *Vayiqrah R.*, xxviii. 1.

<sup>7</sup> *Vayiq. R.*, vii. 3: אמר הקב"ה הוואיל ואתן מתעסקין בהן מעלה אני עליכן באגו אתם מקריבין אותם.

<sup>8</sup> See *Bresh. R.*, xx.: משל לבן מלך וכו'.



during worship, for which there is no foundation in the Bible whatever, than in Mussulman countries by not wearing their shoes in the synagog for which Moses and Joshua should have established a precedent?<sup>9</sup> Or is it less Jewish to lay wreaths of flowers on the coffin than to put feed for horses on the grave, as was customary among French Jews during the Middle Ages?<sup>10</sup>

During the past few years the Seventh-Day-Sabbath, perhaps the only historical relic bequeathed to us by ancient Judaism, formed the storm centre of the two "struggle groups." Repeated experiments in various places and for a period of more than a score of years have only corroborated Dr. Einhorn's saw: *Den Sabbat verschachern sie, den Sonntag verspielen sie*. But were a change of it to the first day to receive the sanction of the people, it would be neither new nor novel. Fasts and feasts have been changed or abolished before. R. Yhudah Hannasi or his son declared himself against the Fast of the Ninth of

<sup>9</sup> *Ex.*, iii. 5; *Josh.*, v. 15. See Zosnitz, *Hammaor*, Warsaw, 1889, pp. 115-6; Zweifel, *op. cit.*, pp. 66-7; Zunz, *Ritus*, II., p. 59; Guedemann, *Culturgesch.*, III. 79; Abrahams, *op. cit.*, p. 278; Joseph, *Judaism as Life and Creed*, pp. 12-27, 306 and Intr.; Chorin, *Kinath Haemeth*, quoted by M. Raisin in *Y. B. C. C. A. R.*, vol. XVI. pp. 282-3.

<sup>10</sup> Tosaph, *Brakh.*, 19b, s. v. "Mdalgin."



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Ab.<sup>11</sup> We find that Solomon suspended the very Day of Atonement, the Sabbath of Sabbaths, because circumstances justified it (1 *Kings* viii. 65)<sup>12</sup> and that the latter Rabbis so contrived the calendar that it can never fall immediately before or after the Sabbath, although they regarded it as a perpetual ordinance.<sup>13</sup> Express provision was made for those who could not observe the Pass-over at the appointed season to have a *Pesah Sheni* a month later, and why not then a *Shabbath Sheni*? If R. Gamaliel, as we saw, changed the Jewish New Year's Day, and others the Day of the Reading of the Law, for the benefit of the "people of the field," why should a similar change not be justifiable for the benefit of the people of the factory?

The author does by no means intend to advocate the transference of the traditional Sabbath.<sup>14</sup> He merely wants to prove the remarkable expansiveness of Judaism and the falsity of the alarm

<sup>11</sup> *Mgillah*, 5b. See on Feasts, *Zech.*, viii. 19; on Sacrifices, 1 *Kings*, xv. 22; *Is.*, i. 11, lxvi. 1-3; *Hosea*, vi. 6; *Micah*, vi. 6-8; *Jer.*, vi. 20.

<sup>12</sup> See Rashi *ad loco*: נמצא שאכלו ושתו ביוהכ"פ.

<sup>13</sup> *Mid.*, *Mishle*, ix. 2; *Yal.*, *Leviticus*, vii. 12; *Mishnah*, *Tadnith*, iv. 1.

<sup>14</sup> See *Year Book C. C. A. R.*, 1902, pp. 123 f.

that its safety is endangered by any one movement. Of this truth its entire history speaks with trumpet tone. Tolerance and intolerance, enlightenment and bigotry, scepticism and fanaticism, crude orthodoxy and iconoclastic heterodoxy, all can find prop and support in the fertile literature of this mother of religions, and are to be reckoned with by every writer of its historical theology. Solomon's Temple was to be a "house of prayer unto all nations" (1 Kings viii. 41-3), Ezekiel's a tabooed sacrifice-sanctuary which the presence of a non-Jew would defile and desecrate (Ez. xlv. 9). R. Eliezer vehemently inveighed against instruction of any kind given to women, but immediately after this statement Ben 'Azzai tells us that it is the bounden duty of the father to educate his girls as well as his boys.<sup>15</sup> Which views should be accepted, which rejected? This the people were to decide upon and they, as a rule, instinctively subscribed to those which, in their differing circumstances, were most conducive to their spiritual well-being. This caused sectarianisms but not sects. Communities disagreed, Minhagim dif-

<sup>15</sup> *Sotah*, 20a. See also Mid., *Mishle*, xiv. 1: וחסד לאומים,, חטאת: "כל חסד שעושין אוה"ע חטאת הוא להם. . . כשם שחטאת מכפרת על ישראל כך צדקה מכפרת על אוה"ע.

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ferred, but Israel remained "one people on earth."

M. James Darmsteter writes,<sup>16</sup> "The clash of traditions, however ancient and deeply rooted, cannot produce a state of ceaseless warfare, since two opposing traditions, when brought in contact, end either by an adaptation of one to the other, if they be equally strong and sound, or by the *conversion* of one into the other." This is true in every respect of Judaism. The fear of splitting the Jewish people into *agudoth*, *agudoth*, or sects, acted as a check on the ardor of the Shammaites,<sup>17</sup> subdued the mysticism of the Qabbalists, mitigated the enthusiasm of the Hasidim, and is now making for a better understanding of, and hence a more mutual appreciation between, the two "wings" of Israel of today. Orthodox and Reform begin to learn that old battle cries fail to meet new issues. The former begin to recognize that today's radicalism is tomorrow's conservatism; while the latter also begin to acknowledge that, in the Carlylean figure, "the old clothes

<sup>16</sup> *Op. cit.*, p. 173. So also Draper, *op. cit.*, p. 52: "The maxim holds good in the social [religious] as well as in the mechanical world, that, when two bodies strike, the form of both is changed."

<sup>17</sup> Rashi, *Ybam.*, 15b; *Mgil.*, 3a.

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which had been outgrown and were finally torn off and thrown aside with contempt, did after all good service in their time," and even doubt sometimes whether they were not thrown off too soon. And the leaders of both are becoming reconciled to the truth that each is part and parcel of the body Judaic, each must contribute to make it a complete whole, for each is a manifestation of one and the same religion, even as the phenomena of light and heat, of sound and motion, are transformations of one and the same energy.

"We and they," wrote the late R. Zadok Kahn of France, "we and they (*i. e.*, Orthodox and Reform) are but like two brothers disputing our patrimony. Neither of us will brook a calumniator or robber to defame or spoil it." "We are still," says R. Friedman of Vienna, "one as we were in the days of old. We know not of sects or, if there be any, no one can draw a line of demarcation where the one begins and the other ends. . . . Judaism, as Mannheimer has it, is made up of *Richtungen*, tendencies, inclinations. And God be thanked that so it is. For a religion devoid of them would result either in the crassest materialism, or the machinations of priestcraft."<sup>18</sup>

<sup>18</sup> Zweifel, *op. cit.*, p. 44; *Bikkurim*, II., "Ziyyunim."

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In other words, as Mr. Glover justly remarks,<sup>19</sup> Jewish law is, indeed, exceedingly flexible as regards its applicability to all climes, and conditions, and ages, but its essence is never entirely absent, the ancient Biblical and Talmudical kernel always underlying it, and constituting its very life and influence in modern Jewish centres." This statement should carry great weight, coming as it does from one who studied Judaism from the viewpoint of an impartial critic rather than of a biased admirer.

Despite the talent shown by the early Qaraites, Qaraism itself, at first a protest against fixity in Judaism, very soon became sterile and impotent, and languishes to the present in a protracted suicide. And why? Because they attempted to suppress six centuries of development and to preclude all progress in the future. It is to that spirit which though aiming at the highest spirituality tolerated creeds and customs with equanimity that Judaism owes its strength and stability. The exquisite subtleties concerning the Godhead, and the character of sin, which cast forth sect after sect from the earliest Christian communities, which declared that they who differed in the least

<sup>19</sup> *Jewish Laws and Customs*, Wells, Minn., 1900, p. 9.

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“without doubt shall perish everlastingly,” never disturbed the peace of Israel. The variety of opinions which always obtained among the Jews were not only compatible but indispensable to their existence. The disputes of the doctors saved their religion from stagnation, the independence of the people secured its perpetuity.<sup>20</sup>

Were a Heine to arise among the Jews of England or of America and draw a parallel between the genius of his people and that of the Anglo-Saxons, he would find his task much easier than in his attempt at an analogy between the offspring of Abraham and that of Odin. The spirit of both is essentially democratic. The *ipse dixit* of the Rabbis and even the “thus saith the Lord” of the prophets are regarded by Jews almost as the edicts of their sovereigns are by the English—they must be in keeping with the consensus of opinion of the people. Lacking this, the codes of even such men as Alfasi, Maimonides, Asheri and Karo, like the “Grand Model” of John Locke, proved to be only ingenious attempts, fit for the delectation of the scholar, but unsatisfac-

<sup>20</sup> See Maine, *Ancient Law*, ix.; Clarke, *Orthodoxy*, Boston, 1902; Gladden, *Great Religions of the World*, N. Y., 1901; Draper, *op. cit.*, pp. 78-9.



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tory when applied to the realities of actual life. The Rabbi is the source of spiritual law in so far only as the British ruler is, according to Blackstone, the "fountain of justice," being "not the *author* or *original*, but only the *distributor*." Of Jewish ceremonial law as of English common law we may say, in the words of a modern writer, that most that was excellent in them "came from the good customs of the people, developed in their local courts."<sup>21</sup>

"Judaism," as an eminent authority defines it,<sup>22</sup> "is a nomistic religion, a very large portion of the laws of which is purely ceremonial." Its very creed, if it ever had any, was the outgrowth of custom. What was a *Minhag* once became encysted, hardened and crystallized into an *Ani Maamin*, a *credo*, until gradually there grew up as many articles of faith as there are veins in the body and days in the year. But the time must come when ceremonial Judaism will be accepted for what it is worth; when Jews, believing themselves to hold diverse religious views because of their different religious practices, will recognize that all these distinct *Minhagim*, which they set so much store

<sup>21</sup> Macy, *Our Government*, Boston, 1892, pp. 91-2.

<sup>22</sup> Montefiore, *op. cit.*, p. 516.

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by, are merely indications of the autonomy and independence of the Jewish congregations. These Minhagim served the purpose of preserving the basic principle of Jewish polity—*imperium et libertas*. They gave the various Jewries a “home rule divorced from separation.” But aside from this they have no significance. Like the butterfly they were bound “to be born and die.” When this fact shall be recognized, the two “wings” of the house of Israel, the one interpreting the Law in the light of the past, the other in the light of the present, will work in unison to make Judaism the religion of the future. “The Roman Catholic church,” says Dr. Freeman Clarke, “has union, but not freedom; the Protestant churches have freedom, but not union.” The Jewish Synagog did and can have both. In this realization America must take the lead. The hope of Judaism, its present “deliverance and enlargement” lies with us. Here, more than anywhere else, it pulsates with life, movement and progress. Ours is the privilege to show that diversity in specials does not necessarily imply disagreement in generals; that behind the varying and variable Minhagim there is ever the same invariable religion; that our *sic et non*, the “free” and the “fixed,” are both the

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words of the living God. "Let not him that eateth *despise* him that eateth not; and let not him that eateth not *judge* him that eateth." Let the conservative but learn that, in the words of Rabbi Guedemann, *Was abfaellt ist abfall*; and the radical that antiquity does not always spell debility; and both find common ground in the two great dogmas which, according to James Darmsteter—whom Professor Jastrow calls "the Jewish Renan"—"ever since the prophets, constitute the whole of Judaism: the divine unity and Messianism—unity of law throughout the world, and the terrestrial triumph of justice in humanity." Then will there finally be peace upon Israel, and

"Those opposed eyes,  
Which like the meteors of a troubled heaven,  
All of one nature, of one substance bred,  
Did lately meet in the intestine shock,  
Shall now in mutual well-beseeming ranks  
March all one way."













